

ESTTA Tracking number: **ESTTA528298**Filing date: **03/22/2013**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91194974
Party	Plaintiff Promark Brands Inc. and H.J. Heinz Company
Correspondence Address	ANGELA R GOTT JONES DAY 901 LAKESIDE AVENUE CLEVELAND, OH 44114-1190 UNITED STATES tfraelich@jonesday.com, agott@jonesday.com, pcyngier@jonesday.com
Submission	Testimony For Plaintiff
Filer's Name	Angela R. Gott
Filer's e-mail	agott@jonesday.com, tfraelich@jonesday.com, pcyngier@jonesday.com
Signature	/Angela R. Gott/
Date	03/22/2013
Attachments	Opposers' Notice of Filing of Certified Deposition Transcript and Exhibits- Hudson.pdf ( 3 pages )(101117 bytes ) Hudson - Corrected - Full.pdf ( 107 pages )(2965550 bytes ) Exhibit 1.PDF ( 3 pages )(44118 bytes ) Exhibit 2.PDF ( 4 pages )(226630 bytes ) Exhibit 3.PDF ( 4 pages )(215544 bytes ) Exhibit 4.PDF ( 4 pages )(204884 bytes ) Exhibit 5.PDF ( 4 pages )(217599 bytes ) Exhibit 6.PDF ( 4 pages )(216552 bytes ) Exhibit 7.PDF ( 28 pages )(1664325 bytes ) Exhibit 8.PDF ( 13 pages )(769568 bytes ) Exhibit 9.PDF ( 13 pages )(746650 bytes ) Exhibit 10.PDF ( 14 pages )(964033 bytes ) Exhibit 11.PDF ( 14 pages )(851516 bytes ) Exhibit 12.PDF ( 13 pages )(822021 bytes ) Exhibit 13.PDF ( 13 pages )(827024 bytes ) Exhibit 14.PDF ( 13 pages )(750621 bytes ) Exhibit 15.PDF ( 12 pages )(711893 bytes ) Exhibit 16.PDF ( 13 pages )(724501 bytes ) Exhibit 17.PDF ( 12 pages )(665904 bytes ) Exhibit 18.PDF ( 12 pages )(683595 bytes ) Exhibit 19.PDF ( 8 pages )(513192 bytes ) Exhibit 20.PDF ( 9 pages )(625418 bytes ) Exhibit 21.PDF ( 9 pages )(622774 bytes ) Exhibit 22.PDF ( 7 pages )(480226 bytes ) Exhibit 23.PDF ( 7 pages )(451926 bytes ) Exhibit 24.PDF ( 9 pages )(733700 bytes ) Exhibit 25.PDF ( 6 pages )(402894 bytes ) Exhibit 26.PDF ( 6 pages )(376636 bytes ) Exhibit 27.PDF ( 6 pages )(397613 bytes ) Exhibit 28.PDF ( 5 pages )(382281 bytes ) Exhibit 29.PDF ( 6 pages )(443526 bytes ) Exhibit 30.PDF ( 6 pages )(439969 bytes ) Exhibit 31.PDF ( 6 pages )(445927 bytes ) Exhibit 32.PDF ( 6 pages )(450890 bytes ) Exhibit 33.PDF ( 3 pages )(233919 bytes ) Exhibit 34.PDF ( 3 pages )(233095 bytes )

	Exhibit 35.PDF ( 16 pages )(1855190 bytes ) Applicant's Exhibit 2.pdf ( 1 page )(1549063 bytes ) Applicant's Exhibit 3.pdf ( 2 pages )(3170781 bytes ) Applicant's Exhibit 4.pdf ( 1 page )(1945694 bytes ) Applicant's Exhibit 5.pdf ( 1 page )(2136652 bytes ) Applicant's Exhibit 6.pdf ( 1 page )(2164806 bytes ) Applicant's Exhibit 7.pdf ( 1 page )(2069222 bytes ) Applicant's Exhibit 8.pdf ( 1 page )(1737696 bytes )
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

PROMARK BRANDS INC. and  
H. J. HEINZ COMPANY,

Opposers,

vs.

GFA BRANDS, INC.,

Applicant.

**Opposition No. 91194974 (Parent)  
and Opposition No. 91196358**

U.S. Trademark Application 77/864,305  
For the Mark **SMART BALANCE**

U.S. Trademark Application 77/864,268  
For the Mark **SMART BALANCE**

**OPPOSERS' NOTICE OF FILING OF  
CERTIFIED DEPOSITION TRANSCRIPT AND EXHIBITS**

Pursuant to Rule 2.125(c) of the Trademark Rules of Practice and Section 703.01(k) of the Trademark Trial and Appeal Board Manual of Procedure (the "TBMP"), Opposers, ProMark Brands Inc. and H. J. Heinz Company, hereby file with the Board, and notify Applicant of the filing of, the corrected certified transcript and accompanying exhibits from the February 20, 2013, testimony deposition of Sabrina J. Hudson.

Pursuant to Section 703.01(n) of the TBMP, the transcript has been corrected by writing each correction above the original text that it corrects, each of which has been initialed by Ms. Hudson. (An Errata Sheet listing the corrections has also been included at the end of the transcript.)

Per the stipulated protective order filed on June 30, 2011, and approved by the Board on July 26, 2011, and pursuant to Rules 2.125(e) and 2.126(c) of the Trademark Rules of Practice and Section 703.01(p) of the TBMP, Applicant's Exhibit 1 has been designated as "Confidential – Attorney's Eyes Only" and is being filed with the Board under seal, under separate cover.

Dated this 22nd day of March, 2013.

By: /Angela R. Gott/  
Timothy P. Fraelich  
Angela R. Gott  
JONES DAY  
North Point  
901 Lakeside Avenue  
Cleveland, Ohio 44114-1190  
(216) 586-3939 (phone)  
(216) 579-0212 (fax)  
tfraclich@jonesday.com  
agott@jonesday.com

Kevin C. Meacham  
JONES DAY  
500 Grant Street, Suite 4500  
Pittsburgh, Pennsylvania 15219-2514  
(412) 394-7265 (phone)  
(412) 394-7959 (fax)  
kcmeacham@jonesday.com

*Attorneys for Opposers  
ProMark Brands Inc. and H. J. Heinz Company*

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing was sent by UPS, postage prepaid,  
on this 22nd day of March, 2013, to Counsel for Applicant:

Marta S. Levine  
David R. Cross  
Johanna M. Wilbert  
QUARLES & BRADY LLP  
411 East Wisconsin Avenue, Suite 2350  
Milwaukee, Wisconsin 53202-4426

marta.levine@quarles.com  
david.cross@quarles.com  
johanna.wilbert@quarles.com

/Angela R. Gott/  
\_\_\_\_\_  
Attorney for Opposers

1                               SABRINA HUDSON

2             IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
3             BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

4                               - - -

5     PROMARK BRANDS INC. and          )Opposition No. 91194974  
6     H.J. HEINZ COMPANY,              )(Parent) and  
7                                      )Opposition No. 911963580  
8                     Opposers,       )  
9                                      )U.S. Trademark Application  
vs.                                    )77/864,305 For the Mark  
                                      )SMART BALANCE  
GFA BRANDS, INC.,                    )  
                                      )U.S. Trademark Application  
Applicant.                            )77/864,268 For the Mark  
                                      )SMART BALANCE

11 Deposition of SABRINA HUDSON  
12 Wednesday, February 20, 2013

14                   The deposition of SABRINA HUDSON, called as a  
15 witness in her own right, pursuant to Rule 2.123 of  
16 the Trademark Rules of Practice and Rules 28 and 30 of  
17 the Federal Rules of Civil Procedure, taken before me,  
18 the undersigned, Jenna Nicole Freund, a Notary Public  
in and for the Commonwealth of Pennsylvania, at the  
offices of Jones Day, 500 Grant Street, Suite 4500,  
Pittsburgh, Pennsylvania 15219, commencing at 9:00  
o'clock a.m., the day and date above set forth.

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1 SABRINA HUDSON

2 APPEARANCES:

3 On behalf of the Opposers:

4 Jones Day:  
5 Timothy P. Fraelich, Esquire  
6 North Point  
901 Lakeside Avenue  
Cleveland, Ohio 44114-1190

7 On behalf of the Applicant:

8 Quarles & Brady LLP:  
9 Johanna M. Wilbert, Esquire  
411 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202-4497

10

- - -

11

ALSO PRESENT:

12

13 Rick Gray  
Mike Hertlein

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- - -

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1 SABRINA HUDSON

2 SABRINA HUDSON

3 called as a witness by the Opposers, having been first  
4 duly sworn, as hereinafter certified, was deposed and  
5 said as follows:

6 DIRECT EXAMINATION:

7 BY MR. FRAELICH:

8 Q Could you state your full name for the  
9 record, please?

10 A Sabrina Jane Hudson.

11 Q And are you currently employed?

12 A Yes, I am.

13 Q Where are you employed?

14 A H.J. Heinz Company.

15 Q How long have you been employed by Heinz?

16 A About six and a half years.

17 Q And do you have a title at the H.J. Heinz  
18 Company?

19 A I do, it's associate director, corporate  
20 counsel.

21 Q Do you have any other titles?

22 A No.

23 Q Could you describe for me some of your  
24 responsibilities as associate director, corporate  
25 counsel?

1 SABRINA HUDSON

2 A My main responsibility is to handle the  
3 global trademark matters, and that includes everything  
4 related to the trademarks including prosecution,  
5 enforcement, also license agreements, deals and  
6 acquisitions that relate to trademarks.

7 I also handle and support Heinz North  
8 America advertising and marketing, so I review all the  
9 U.S. advertising material before it goes out.

10 I also review all the packaging for U.S.  
11 and Canada. And in connection with supporting the  
12 advertising marketing team from the legal perspective,  
13 I would review any sort of co-promotion agreements.

14 Another responsibility I have is I am also  
15 responsible for global social media, as well, from a  
16 legal perspective.

17 Q Are you an attorney?

18 A Yes, I am.

19 Q And you're licensed to practice where?

20 A In Pennsylvania.

21 Q And during the six and a half years that  
22 you have worked at Heinz, have you had similar  
23 responsibilities to those that you exercise now?

24 A Yes. It's been about a year since I took  
25 on the advertising and marketing role for Heinz North



1 SABRINA HUDSON

2 America, but the whole six and a half years I have  
3 been there I was handling the global trademark matters  
4 for Heinz.

5 Q Are you the person primarily responsible  
6 for global trademark matters for Heinz in Pittsburgh?

7 A Yes.

8 Q And what did you do before you came to work  
9 for Heinz?

10 A I was an attorney at a law firm in  
11 Pittsburgh, it's now called K&L Gates.

12 Q How long were you there?

13 A Six and a half years.

14 Q And what type of work did you do at K&L  
15 Gates?

16 A I did a couple different things, I did  
17 trademark work as well, including prosecution,  
18 enforcement, litigation, and then I also did general  
19 litigation.

20 Q How much of your time at K&L Gates was  
21 spent on matters involving trademarks?

22 A I would say 80 percent.

23 Q And as part of those responsibilities, did  
24 you become familiar with the law related to  
25 trademarks?

1 SABRINA HUDSON

2 A Yes.

3 Q Are you familiar with the federal statute  
4 that pertains to trademarks?

5 A Yes.

6 Q Do you know what the name of that statute  
7 is?

8 A The Lanham Act.

9 Q Are you familiar with the Smart Balance  
10 trademark?

11 A I am.

12 Q And are you aware of any applications being  
13 filed in the United States Trademark Office?

14 A Yes.

15 Q To your knowledge, how many applications  
16 were filed for the Smart Balance trademark that are at  
17 issue in this proceeding?

18 A Two.

19 Q And who provided instructions that those  
20 marks were to be opposed?

21 A I did.

22 Q Why did you do so?

23 A After we noticed that they were published  
24 for opposition, we reviewed the applications and  
25 decided that we should oppose based on a likelihood of

1 SABRINA HUDSON

2 confusion with our Smart Ones marks and a likelihood  
3 of dilution with our Smart Ones marks.

4 Q Let me hand you what's been marked as  
5 Opposer's Exhibit 1, and tell me if you have ever seen  
6 that document before?

7 (Thereupon, Opposer's Exhibit No. 1 was  
8 marked for identification.)

9 A I have.

10 Q Could you identify what it is for the  
11 record, please?

12 A Yes, it is opposer's, which is Promark  
13 Brands, Inc. and H.J. Heinz Company's notice of  
14 testimony deposition in this opposition proceeding.

15 Q Okay. And is it your understanding that  
16 you're here to provide testimony on behalf of H.J.  
17 Heinz in connection with that proceeding?

18 A Yes.

19 Q And could you identify for me who the  
20 opposers are in this opposition?

21 A Promark Brands, Inc. and H.J. Heinz Company

22 Q What is Promark Brands, Inc.?

23 A It's a wholly owned subsidiary of H.J.  
24 Heinz Company, and at the time we filed this  
25 opposition, Promark Brands, Inc. owned all rights and

1 SABRINA HUDSON

2 interests in the Smart Ones mark.

3 Since the filing of this opposition, those  
4 were assigned to H.J. Heinz Company.

5 Q On a going forward basis, when I say Heinz,  
6 I am going to be referring collectively to Promark  
7 Brands, Inc. and H.J. Heinz Company; is that  
8 acceptable to you?

9 A Yes.

10 Q Ms. Hudson, are you familiar with the  
11 history of Heinz?

12 A Yes.

13 Q Can you tell me a little bit about the  
14 company?

15 A Yes. It started in 1869 by H.J. Heinz. It  
16 is now a global food company with No. 1 and No. 2  
17 brands in many products around the world. I think our  
18 sales are a little over \$10 billion.

19 Q \$10 billion annually?

20 A Yes.

21 Q And where is Heinz headquartered in the  
22 United States?

23 A Pittsburgh, Pennsylvania.

24 Q Are you familiar with the products that  
25 Heinz sells in the United States?

1 SABRINA HUDSON

2 A Yes.

3 Q Can you describe some of the products that  
4 Heinz sells?

5 A Yes. We have different categories:  
6 Condiments and sauces, which would include a variety  
7 of things including ketchup, mustard, mayonnaise,  
8 vinegar, pickles, other different sauces, barbecue  
9 sauces, pasta sauces.

10 We also have a variety of frozen food  
11 products including frozen potatoes, frozen meals,  
12 entrees, snacks, breakfast, desserts, and we also  
13 have -- in our food service, we do a large soup  
14 business and -- I am trying to think, I think I have  
15 covered everything.

16 Q Are you familiar with the trademarks that  
17 Heinz owns in connection with its product lines?

18 A Yes.

19 Q I don't expect an exhaustive list, but can  
20 you identify for me some of the most prominent  
21 trademarks the company owns?

SH 22 A Yes. Obviously, Heinz Ore-Ida, Smart Ones,  
23 Classico would be our some of our top brands in the  
24 U.S.

25 Q You mentioned the Smart Ones trademark; are

1 SABRINA HUDSON

2 you familiar with the products that are sold in  
3 connection with that trademark?

4 A Yes.

5 Q Tell me about the Smart Ones product line.

6 A We have frozen breakfasts, that would  
7 include things like French toast, pancakes, breakfast  
8 sandwiches, also meals that have eggs and potatoes in  
9 them. We also have some breakfast wraps that have  
10 eggs inside of them.

11 Then we have what we call a frozen entree  
12 or frozen dinner line or segment, and that includes  
13 trays and bagged meals which have a huge variety.  
14 Some of them are more pasta based, they are Italian  
15 style type meals, some of them are Asian based, Asian  
16 style meals, we have Mexican style meals.

17 We also have snacks and hand held entrees,  
18 so those would include hamburger sliders, chicken  
19 sliders, quesadillas, pizza snacks, we also have  
20 pizzas, and desserts, as well.

21 Desserts would include things like ice  
22 cream sundaes, cakes, pies.

23 Q Are you familiar with the history and  
24 development of the Smart Ones brand?

25 A Yes.

1 SABRINA HUDSON

2 Q When was the Smart Ones product brand first  
3 introduced into the market?

4 A Around 1992.

5 Q And that was in the United States?

6 A Yes.

7 Q And since that time, has the number of  
8 products sold in connection with the Smart Ones  
9 trademark grown larger or smaller?

10 A Larger. Since I have been at Heinz for six  
11 and a half years, it's grown larger, as well.

12 Q How would you characterize the expansion?  
13 Has it been -- I will let you characterize it. How  
14 would you characterize the expansion of the brand?

15 A I would say it's been -- the growth has  
16 been pretty high, not only in terms of innovation and  
17 product introductions, for example, when we launched  
18 the bag meals, I believe we launched around six or  
19 seven SKUs at one time.

20 Also, not only the innovation of the  
21 products, but just the advertising has greatly  
22 increased.

23 Q You used the term SKUs; what's a SKU?

24 A I forget what it stands for, but basically,  
25 it just means one product. If we have a macaroni and

1 SABRINA HUDSON

2 cheese product, that's a SKU. If we have a chicken  
3 parmesan, that's another SKU. So it just refers to a  
4 different item.

5 Q Is this a term that the company uses?

6 A The industry uses it.

7 Q So it's used by the retailers that sell  
8 your products as well or not?

9 A I think so, yes.

10 Q Is the Smart Ones trademark important to  
11 Heinz?

12 A Yes.

13 Q Why so?

14 A It's one of our top brands, especially in  
15 the U.S.

16 It's one of our top brands as far as sales,  
17 and it's also -- you know, we are in the food  
18 industry, we are also very big in health and wellness,  
19 and this brand is an important brand for the health  
20 and wellness platform.

21 Q Does the Smart Ones product line fall into  
22 any particular category in the industry?

23 A Generally, we classify it in the frozen  
24 nutritional category.

25 Q What's the frozen nutritional category?



1 SABRINA HUDSON

2 A It's generally items -- mostly meals that  
3 are somehow better for you. A lot of times it could  
4 be that they are portion <sup>controlled</sup> control or they have lower  
5 calories, lower fat, probably as a result maybe lower  
6 in what people consider nutritionals that are not  
7 necessarily good for you but have nutritionals that  
8 are better for you, whole grains and things like that.

9 Q Are they the type of product that people  
10 eat if they are trying to lead a healthier lifestyle?

11 A I think it's a combination. It probably  
12 depends on the consumer. I think some people eat  
13 those products to lose weight, I think some people eat  
14 those products to maintain their weight, and I think  
15 some people just eat it to -- you know, to live a  
16 healthier lifestyle and try to control their portions  
17 and intake of bad nutritionals.

18 Q And are you familiar with the Smart Balance  
19 brand?

20 A Yes.

21 Q Tell me what you know about the Smart  
22 Balance brand.

23 A Well, I know it's used in connection with  
24 margarines margarins, oils, butters, I believe egg products as  
25 well, maybe popcorn.

1 SABRINA HUDSON

2 And my understanding is that it focuses a  
3 lot on heart healthy. So it's meant for people who  
4 are trying to watch their health, especially in terms  
5 of things that -- ingredients or content that may be  
6 bad for people who may have heart problems or heart  
7 issues.

8 Q Would -- based upon your experience and  
9 your responsibilities at Heinz, would you consider  
10 products sold in connection with the Smart Balance  
11 trademark to fall into the nutritional category?

12 A Yes.

13 Q Why is that?

14 A First of all, I think the way it's  
15 positioned now is that it's better for you. I haven't  
16 compared the nutritionals, I don't exactly know about  
17 calories and fat.

18 Generally, when you have something that's  
19 heart healthy, it's lower in sodium, lower in fat,  
20 usually lower in calories, so it would fall into --  
21 there is generally, my understanding, is two  
22 categories in the frozen section, the nutritional  
23 categories are what we term as more of the full fat,  
24 so I don't think the heart healthy product would fall  
25 into full fat, I think it would fall into the

1 SABRINA HUDSON

2 nutritional category.

3 Q What is your understanding about who owns  
4 the Smart Balance trademark?

5 A GFA Brands.

6 Q And as a consequence of your  
7 responsibilities at Heinz, have you had occasion to  
8 compare the Smart Ones trademark to the Smart Balance  
9 trademark?

10 A Yes.

11 Q As part of that comparison, do you believe  
12 that the Smart Ones trademark and the Smart Balance  
13 trademark are similar in appearance?

14 A I do.

15 Q Do you believe that the Smart Ones  
16 trademark and the Smart Balance trademark are similar  
17 in sound?

18 A I do.

19 Q Do you believe that the Smart Ones  
20 trademark and the Smart Balance trademark are similar  
21 in meaning?

22 A I do.

23 Q What is a commercial impression? In your  
24 industry when you talk about a commercial impression,  
25 what does that mean?

1 SABRINA HUDSON

2 A It's sort of the impression that consumers  
3 get when they see a mark or a product.

4 Q Okay. And in your opinion, do -- does the  
5 Smart Balance trademark and the Smart Ones trademark  
6 convey the same commercial impression?

SH 7 A Yes, I do think. <sup>think so</sup>

8 Q What if any concerns do you have about the  
9 Smart Balance trademark?

10 A Well, if they begin selling these products  
11 in the frozen nutritional category or in the frozen  
12 category, they will directly compete with our Smart  
13 Ones products.

14 And I believe that the use of Smart Balance  
15 in connection with frozen food products is going to  
16 cause consumer confusion with our Smart Ones marks.

17 And also, I think it's going to dilute the  
18 good will and the distinctive quality of our Smart  
19 Ones trademark.

20 Q Could you provide a description of some of  
21 the products that I might see if I would go to a  
22 grocery store shopping for a Smart Ones product?

23 A Yes. If you were shopping for breakfast,  
24 as I said before, French toast, pancakes, breakfast  
25 sandwiches which are usually an English muffin with

1 SABRINA HUDSON

2 egg and maybe a slice of meat on them and cheese.

3 And then for our entrees we have three  
4 cheese ziti, macaroni and cheese, we have some -- I  
5 forget the exact name of the product, but some Mexican  
6 style wraps, we have shrimp marinara pasta, we have  
7 some Asian style like sesame chicken, and then we have  
8 pizza snacks, hamburger sliders, little quesadillas.

9 And then desserts, chocolate chip ice cream  
10 sundae, key lime pie are some examples.

11 Q And how would you describe the reputation  
12 of the Smart Ones trademark among consumers?

13 A I think it's very high.

14 Q Why do you say that?

15 A First of all, it's been a brand that's been  
16 in existence, if my math is right, a little over 20  
17 years and, you know, it's been an important brand,  
18 it's been highly promoted over those 20 years and even  
19 more so since I have been at Heinz.

20 And we have a very high sales volume, so I  
21 think consumers know it and, you know, recognize it.

22 Q Do you currently consider GFA Brands to be  
23 a competitor of Heinz?

24 A Not currently because they are not selling  
25 any products that are in our product categories.

1 SABRINA HUDSON

2 Q Assuming hypothetically that GFA Brands  
3 were to introduce a frozen nutritional product in  
4 connection with the Smart Balance trademark, would you  
5 consider it to be a competitor of Heinz at that point?

6 A Yes, I would.

7 Q Why is that?

8 A They would be selling the exact same  
9 products.

10 Q Do you believe that the introduction of  
11 such nutritional products in connection with the Smart  
12 Balance trademark would cause confusion?

13 A I do.

14 Q How would that confusion manifest itself in  
15 your opinion?

16 A It can manifest in a variety of different  
17 ways. You could have a situation where someone could  
18 purchase their product thinking it is ours, you could  
19 have someone thinking that the two parties are related  
20 or there is some sort of licensing relationship so  
21 that if, you know, I am a consumer and I purchase a  
22 Smart Balance frozen entree and I don't like it, then  
23 I may call Heinz and complain or I may go to Heinz's  
24 Smart Ones Facebook page and complain.

25 And that would have a negative impact on

1 SABRINA HUDSON

2 our good will of our Smart Ones trademark.

3 Q To date, are you aware of any actual  
4 confusion that's occurred as a result of GFA Brands'  
5 use of the Smart Balance trademark and Heinz's use of  
6 the Smart Ones trademark?

7 A No, but I wouldn't expect to because they  
8 are not in our product categories.

9 Q But if they enter your product categories,  
10 what do you think will occur?

11 A I think there will be confusion.

12 Q Let me hand you what's been marked as  
13 Opposer's Exhibit 2 and ask you to take a look at that  
14 document, please.

15 (Thereupon, Opposer's Exhibit No. 2 was  
16 marked for identification.)

17 A Okay.

18 Q And do you recognize this document?

19 A I do.

20 Q And could you describe what it is for the  
21 record?

22 A It's a four-page document. The first is a  
23 copy of the U.S. registration certificate for U.S.  
24 registration No. 1911590 for the mark Smart Ones, and  
25 then the last three pages are printouts from the U.S.

1 SABRINA HUDSON

2 Patent and Trademark Offices website, their TARR  
3 system, T-A-R-R.

4 Q Let me direct your attention to the last  
5 page of the printout.

6 A Okay.

7 Q And could you identify who the  
8 correspondent is for this trademark registration?

9 A It's me.

10 Q And who owns this registration?

11 A H.J. Heinz Company.

12 Q Could you describe for the record what the  
13 goods are that are claimed in the registration?

14 A Class 29, frozen entrees consisting  
15 primarily of chicken, beef, fish and/or vegetables,  
16 and class 30, frozen entrees consisting primarily of  
17 pasta and/or rice alone or in combination with other  
18 foods.

19 Q Does Heinz currently use the Smart Ones  
20 trademark in connection with these goods?

21 A It does.

22 Q What is your understanding of the date that  
23 Heinz first began using the Smart Ones mark in  
24 connection with the goods designated in this  
25 registration?



1 SABRINA HUDSON

2 A At least as early as May 1992.

3 Q Do you believe that Heinz has continuously  
4 used the Smart Ones trademark in connection with the  
5 goods identified in this registration since that date?

6 A I do.

7 Q Let me hand you what's been marked as  
8 Opposer's Exhibit 3 and ask you to take a look at  
9 that, please.

10 Do you recognize this document?

11 (Thereupon, Opposer's Exhibit No. 3 was  
12 marked for identification.)

13 A I do.

14 Q Could you describe what it is for the  
15 record, please?

16 A It's a four page document, the first page  
17 is a copy of the U.S. Trademark Registration  
18 <sup>registration</sup> Certificate for trademark register No. 2204080 for the  
19 mark Smart Ones, and the remaining three pages are a  
20 printout from the U.S. Patent and Trademark Office's  
21 electronic TARR system.

22 Q Let me direct your attention to the last  
23 page of the exhibit; there is someone identified as  
24 the correspondent?

25 A Me.

1 SABRINA HUDSON

2 Q Can you tell me who owns this registration?

3 A H.J. Heinz Company.

4 Q Can you recite for the record what the  
5 goods are that are claimed in this registration?

6 A Class 30, it's frozen desserts consisting  
7 of milk based or milk substitute based desserts,  
8 cakes, pies.

9 Q And do you know if Heinz currently uses the  
10 Smart Ones trademark in connection with these goods?

11 A It does.

12 Q What is your understanding of the date that  
13 Heinz first began using the Smart Ones trademark in  
14 connection with these goods?

15 A At least as early as November 1997.

16 Q Do you believe that Heinz currently uses  
17 the Smart Ones trademark in connection with these  
18 goods?

19 A I do.

20 Q Let me hand you what's been marked as  
21 Opposer's Exhibit 4 and ask you to take a look at that  
22 for me, please.

23 Do you recognize this document?

24 (Thereupon, Opposer's Exhibit No. 4 was  
25 marked for identification.)

1 SABRINA HUDSON

2 A I do.

3 Q Could you describe it for the record,  
4 please?

5 A It's a four-page document. The first page  
6 is a copy of the U.S. Patent and Trademark Office  
7 registration certificate for registration No. 2916538  
8 for the mark Smart Ones. The remaining three pages  
9 are printouts from U.S. Patent and Trademark Office's  
10 electronic TARR system.

11 Q Let me direct your attention to the last  
12 page of the exhibit. Listed as both the attorney of  
13 record and the correspondent for this registration is  
14 who?

15 A Me.

16 Q Can you tell me who owns this registration?

17 A H.J. Heinz Company.

18 Q What are the goods that are claimed in the  
19 registration?

20 A Pizza in class 30.

21 Q Does Heinz currently use the Smart Ones  
22 trademark in connection with pizza?

23 A It does.

24 Q Do you know when Heinz began using the  
25 Smart Ones trademark in connection with pizza?

1 SABRINA HUDSON

2 A At least as early as November 1997.

3 Q Is it your understanding that Heinz has  
4 continuously used the Smart Ones trademark in  
5 connection with pizza since that date?

6 A It is.

7 Q Let me hand you what's been marked as  
8 Opposer's Exhibit 5 and ask you to tell me if you have  
9 ever seen this document before?

10 (Thereupon, Opposer's Exhibit No. 5 was  
11 marked for identification.)

12 A Yes.

13 Q Could you describe what it is for the  
14 record?

15 A It's a four-page document, the first one is  
16 a copy of the U.S. Patent and Trademark Office's  
17 registration certificate for registration  
18 No. 2916539. The remaining three pages are a printout  
19 from the U.S. Patent and Trademark Office's electronic  
20 TARR system.

21 Q Let me direct your attention to the last  
22 page of Exhibit 5. And identified as both the  
23 attorney of record and the correspondent for this  
24 registration is who?

25 A Me.

1 SABRINA HUDSON

2 Q Could you recite for the record what the  
3 goods are that are claimed in this registration?

4 A In class 30, precooked, ready to eat frozen  
5 bread or wrap having a meat and/or vegetable filling  
6 with or without cheese.

7 Q Does Heinz currently use the Smart Ones  
8 trademark in connection with those goods?

9 A Yes.

10 Q What is your understanding of the date that  
11 Heinz first began using the Smart Ones trademark in  
12 connection with those goods?

13 A At least as early as April 2001.

14 Q Do you believe that Heinz has continuously  
15 used the Smart Ones trademark in connection with those  
16 goods?

17 A I do.

18 Q Let me hand you what's been marked as  
19 Opposer's Exhibit 6, and tell me if you recognize that  
20 document?

21 (Thereupon, Opposer's Exhibit No. 6 was  
22 marked for identification.)

23 A I do.

24 Q Could you identify it for the record  
25 please?

1 SABRINA HUDSON

2 A It's a four-page document. The first page  
3 is a copy of the U.S. Patent and Trademark Office  
4 registration certificate for registration No. 3462182  
5 for the mark Smart Ones.

6 The remaining three pages are printouts  
7 from the U.S. Patent and Trademark Office's electronic  
8 TARR system.

9 Q Let me direct your attention to the last  
10 page of this Exhibit 6, and could you identify for me  
11 who the individual is that's designated as both the  
12 attorney of record and correspondent for this  
13 registration?

14 A Me.

15 Q Who owns this registration?

16 A H.J. Heinz Company.

17 Q What are the goods claimed in the  
18 registration?

19 A In class 30, frozen foods, namely breakfast  
20 sandwiches and muffins.

21 Q Do you know if Heinz currently uses the  
22 Smart Ones trademark in connection with those goods?

23 A It does.

24 Q What is your understanding of what Heinz  
25 first began using the Smart Ones trademark in

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2 connection with those goods?

3 A At least at early as December 1997.

4 Q Do you believe that Heinz has continuously  
5 used the Smart Ones trademark in connection with those  
6 goods since that date?

7 A I do.

8 Q As part of your responsibilities for Heinz,  
9 do you actively monitor potentially conflicting  
10 trademarks?

11 A Yes.

12 Q Describe that process for me.

13 A We have a couple different ways that we do  
14 that. First of all, we hire a third party who sends  
15 us reports once a day of confusing marks based on the  
16 marks that we have given them, and I personally review  
17 that list.

18 And then we also have a paralegal in our  
19 department who reviews the U.S. Official Gazette and  
20 then she brings to my attention any marks that are  
21 confusingly similar that she thinks may be an issue.

22 Q Do you undertake the exercise you just  
23 described in connection with the Smart Ones trademark,  
24 as well?

25 A Yes, we do.

1 SABRINA HUDSON

2 Q Does Heinz seek to stop those that are  
3 using trademarks which it believes are confusingly  
4 similar to the Smart Ones trademark?

5 A It does.

6 Q Describe that process for me, please.

7 A Well, as I said, you know, if I notice  
8 something when I am reviewing the third party report  
9 or if the paralegal notices something, she brings it  
10 to my attention.

11 We will review the mark, we will review the  
12 goods and also sometimes do research on the  
13 applicant. And then occasionally, we will discuss  
14 with outside counsel, and then if we believe that it  
15 is an application that is likely to confuse consumers,  
16 cause dilution or otherwise damage Heinz's rights,  
17 then we will object.

18 Q Are there occasions where you will find a  
19 trademark that you initially think is problematic but  
20 upon further evaluation, you do not regard it as such?

21 A Yes.

22 Q What are the criteria that you apply in  
23 determining that a trademark is not problematic?

24 A We consider a lot of the DuPont factors,  
25 likelihood of confusion factors that courts and the



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2 trademark trial and appeal board has considered in the  
3 past.

4 Obviously, with an application, you're  
5 limited in all of those factors, so we primarily focus  
6 on similarity of the marks in terms of sight, sound  
7 and meaning and similarity of the goods, also the  
SH 8 strength of our mark and similarity <sup>of</sup> to marketing  
9 channels.

10 Q Does Heinz ever send letters to entities  
11 that are using or applying for trademarks which it  
12 deems to be problematic?

13 A It does.

14 Q Does it send such letters in connection  
15 with the Smart Ones trademark?

16 A It does.

17 Q Does Heinz ever file opposition proceedings  
18 in the trademark trial and appeal board when it  
19 determines there is a potential conflict between a  
20 trademark it owns and a trademark that's been applied  
21 for by another entity?

22 A It does.

23 Q And it did so in connection with this  
24 proceeding; correct?

25 A It did.

1 SABRINA HUDSON

2 Q Who is the person that made the decision to  
3 file this opposition proceeding against GFA Brands?

4 A Ultimately, it was me.

5 Q Okay. Has Heinz ever entered into any  
6 agreements with third parties relating to the Smart  
7 Ones trademark?

8 A We have entered into settlement agreements,  
9 and then historically, we had some license agreements,  
10 but those are no longer in existence.

11 Q Let me hand you what's been marked as  
12 Exhibit 7 and ask you to take a look at that document  
13 for me, please.

14 Can you describe what Exhibit 7 is for the  
15 record, please?

16 (Thereupon, Opposer's Exhibit No. 7 was  
17 marked for identification.)

18 A Yes. The first couple of pages are a  
19 printout from the U.S. Patent and Trademark Office's  
20 trademark trial and appeal board electronic system  
21 regarding an opposition that was filed by Heinz  
22 against GFA Brands' application for Smart Balance, and  
23 then after that is a copy of the actual notice of  
24 opposition that was filed.

25 Q Are you able to discern from this exhibit

1 SABRINA HUDSON

2 the goods that GFA applied to register in connection  
3 with the Smart Balance trademark?

4 A Yes.

5 Q Can you recite those goods for the record,  
6 please?

7 A In class 29, all goods -- okay -- frozen  
8 appetizers primarily containing poultry, meat, seafood  
9 or vegetables, frozen entrees primarily containing  
10 poultry, meat, seafood or vegetables.

11 In class 30, frozen entrees consisting  
12 primarily of pasta or rice.

13 Q Is there an overlap between the goods  
14 described in the GFA application for Smart Balance and  
15 the trademark registration that Heinz owns for Smart  
16 Ones?

17 A Yes, a direct overlap.

18 Q Okay. And with respect to the other  
19 application, can you identify for the record the goods  
20 that were applied for in connection with that  
21 application filed by GFA in connection with Smart  
22 Balance?

23 A Yes. In class 29, soy chips and yucca  
24 chips, y-u-c-c-a, snack mixes consisting primarily of  
25 processed fruits, processed nuts, raisins and/or

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2 seeds, nut and seed based snack bars.

3 In class 30, cake mix, frosting, cakes,  
4 frozen cakes, cookies, coffee, tea, hot chocolate,  
5 bread, rolls, crackers, pretzels, corn chips, snack  
6 mixes consisting primarily of crackers, pretzels, nuts  
7 and/or popped popcorn, spices, granola based snack  
8 bars, pita chips.

9 Q And is there an overlap between the goods  
10 applied for in connection with this application and  
11 the goods that Heinz owns in connection with its Smart  
12 Ones trademarks?

13 A Yes, some of them there is a direct overlap  
14 because we also sell frozen cakes.

15 Q So primarily, the overlap with respect to  
16 this application falls in the category of frozen  
17 cakes?

18 A Or in cakes, yes.

19 Q Have there been occasions where you have  
20 had -- strike that.

21 Have there been instances in the past where  
22 you filed oppositions against other trademarks that  
23 incorporate the word "smart"?

24 A Yes.

25 Q Have you instructed outside counsel to file

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2 opposition proceedings against those trademarks?

3 A Yes.

4 Q Let me hand you what's been marked as  
5 Exhibit 8 and ask you to review that document for me,  
6 please?

7 (Thereupon, Opposer's Exhibit No. 8 was  
8 marked for identification.)

9 A Okay.

10 Q Can you identify what this document is for  
11 the record?

12 A Yes. The first couple pages are a printout  
13 from the U.S. Patent and Trademark Office's trademark  
14 trial and appeal board's electronic system regarding  
15 an opposition that was filed by Heinz against an  
16 individual Mark Sterner, S-t-e-r-n-e-r, his  
17 application for Smart Choice, and the remaining pages  
18 are the actual notice of opposition that was filed or  
19 a copy of the notice of opposition that was filed.

20 Q What were the goods that Mr. Sterner was  
21 seeking to register in connection with the Smart  
22 Choice trademark?

23 A Soups.

24 Q What action did Heinz take with respect to  
25 that application?

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2 A We opposed it.

3 Q Was the Smart Choice mark registered, to  
4 your knowledge?

5 A I don't believe so.

6 Q Okay. And do you recall what the  
7 resolution was of this proceeding?

8 A I believe either we settled with the  
9 applicant or he agreed to withdraw the application.

10 Q Let me hand you what's been marked as  
11 Exhibit 9, and tell me if you recognize that document?

12 (Thereupon, Opposer's Exhibit No. 9 was  
13 marked for identification.)

14 A I do.

15 Q And can you identify it for the record  
16 please?

17 A Yes. The first couple pages are a printout  
18 from the U.S. Patent and Trademark Office's trademark  
19 trial and appeal board's electronic system regarding  
20 **application** an opposition that was filed by an individual Peter,  
21 and I will spell his last name, K-o-l-e-o-g-l-o-u, for  
22 an application for Smart One, and the remaining pages  
23 are a copy of the actual notice of opposition.

24 And the opposition was filed by Heinz.

25 Q Can you tell me what the goods were that

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2 Mr. Koleoglou was attempting to register in connection  
3 with the Smart One trademark?

4 A Yes. In class 28, golf balls, golf club  
5 <sup>aids</sup> bags, golf club swing aides, mainly putting <sup>aids</sup> aides in  
6 the nature of golf putter attachment for improving  
7 user's putting stroke, golf clubs, golf putters,  
8 putting practice mats.

9 Q And you provided instructions to oppose  
10 this trademark?

11 A I did.

12 Q And the goods identified in Mr. Koleogolu's  
13 application seem to be someone far afield from those  
14 that Heinz uses in connection with the Smart Ones  
15 trademark, his application was for Smart One.

16 Do you have an understanding as to what the  
17 reason was that you opposed that trademark?

18 A Yes. First and foremost, he filed for what  
19 we consider the same mark. As the trademark office  
20 <sup>has</sup> and the law is held, you know, Smart One and Smart  
21 Ones are essentially the same mark.

22 So even though the goods are not in the  
23 food category, the mark is the same, so -- and we  
24 also -- even though we don't own any registrations, we  
25 do have sometimes in connection with our stores, we

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2 sell merchandise that may contain the Smart Ones mark  
3 on it, and we also a lot of times give away  
4 promotional merchandise that includes the Smart Ones  
5 mark on it that may be closer or exactly the same as  
6 these goods.

7 Q Do you have a recollection as to what the  
8 outcome was of this opposition?

9 A I am fairly certain that we settled with  
10 the applicant.

11 Q Do you remember offhand what he agreed to  
12 do or not to do?

13 A I think he agreed to limit his goods, and I  
14 also think he agreed to limit the way he used the mark  
15 so there would not be any likelihood of confusion with  
16 the use of our mark, for example, the color and the  
17 style of how the mark is used.

18 Q Okay. Let me hand you what's been marked  
19 as Exhibit 10 and ask you to take a look at that for  
20 me, please.

21 And do you recognize this document?

22 (Thereupon, Opposer's Exhibit No. 10 was  
23 marked for identification.)

24 A I do.

25 Q And can you identify it for the record,



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2 please?

3 A Yes. The first couple pages are the  
4 electronic printout from the U.S. Patent and Trademark  
5 Office's trademark trial and appeal board's electronic  
6 system regarding an opposition that Heinz filed  
7 against AdvancePierre, A-d-v-a-n-c-e-P-i-e-r-r-e,  
8 Foods, Inc.'s application for Smart Picks, p-i-c-k-s,  
9 and the remaining pages are the actual notice of  
10 opposition.

11 Q Now, contained in the notice of opposition  
12 as a description of goods that AdvancePierre was  
13 attempting to register in connection with the Smart  
14 Picks trademark, and the list is quite extensive so I  
15 am not going to ask you to read it into the record,  
16 but can you identify for me generally what the goods  
17 were in classes 29 and 30 that you deemed to be  
18 problematic?

19 And if you need to take the time to read  
20 through it, please do so.

21 A Well, they are in class 29 and 30, and a  
22 lot of them are meat-based products. Probably the  
23 most concerning to us were the sandwiches, in  
24 particular the burger and cheeseburger sandwiches, as  
25 I mentioned, Smart Ones has hamburger sliders.

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2 And then I would also say the whole grain  
3 macaroni and cheese, Heinz not only sells macaroni and  
4 cheese, but also other -- we have a three cheese ziti  
5 which is essentially a pasta and cheese product with a  
6 pasta sauce or tomato sauce.

7 Q Did you have occasion to work with outside  
8 counsel to negotiate a resolution of this matter?

9 A I believe so, yes.

10 Q Do you recall if AdvancePierre intended to  
11 use the Smart Picks trademark in a particular market  
12 segment?

13 A Yes, they were just going to use it in the  
14 institutional setting.

15 Q What is the institutional setting?

16 A If I remember correctly, it was mostly  
17 hospitals, prisons, I can't remember if it included  
18 schools or not.

19 Q Do you recall what the resolution of this  
20 dispute was?

21 A I believe we settled, and I believe that  
22 they agreed to amend the goods description to limit it  
23 just to goods sold in that institutional channel.

24 They also agreed, if I remember correctly,  
25 to restrict their use just to that channel.

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2 Q Let me hand you what's been marked as  
3 Exhibit 11 and ask you to take a look at that  
4 document, please.

5 Can you identify this document for the  
6 record?

7 (Thereupon, Opposer's Exhibit No. 11 was  
8 marked for identification.)

9 A Yes. The first couple pages are a printout  
10 from the U.S. Patent and Trademark Office's trademark  
11 trial and appeal board's electronic system regarding  
12 an opposition filed by Heinz against Nestle's  
13 trademark application for SmartNourish, one word.

14 And the remaining pages are a copy of the  
15 actual notice of opposition.

16 Q Could you recite for the record the goods  
17 that Nestle was seeking to register in connection with  
18 its SmartNourish trademark?

19 A In class 29, freeze died fruits and  
20 vegetables, prepackaged meals consisting primarily of  
21 meat, poultry, vegetables, cheese and fruit, fruit  
22 based snack foods, fruit and yogurt based snack foods,  
23 dairy based beverages, cheese and milk products  
24 excluding ice cream, ice milk and frozen yogurts.

25 In class 30, prepackaged meals consisting

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2 primarily of pasta with meat sauce, pasta and sauce,  
3 processed meat, bakery products, namely crackers,  
4 cookies, biscuits, grain-based snacks foods and whole  
5 grain snacks.

6 Q Did Heinz oppose that application?

7 A We did.

8 Q What was the reason for the opposition?

9 A Well, there was -- we believe there is a  
10 *SH* likelihood of confusion with our Smart <sup>ones</sup> Ones'  
11 registrations, in particular with regard to certain of  
12 the goods that directly overlapped, the prepackaged  
13 meals, and then -- yes, I think that was it.

14 Q And do you have a recollection as to how  
15 this proceeding was resolved, if it was?

16 A I believe that -- I don't think we entered  
17 into a settlement agreement with them, I think they,  
18 on their own, after we opposed, agreed to amend the  
19 *SH* application, and -- with our consent, and we <sup>withdrew</sup> withdraw  
20 the opposition based on their amendment, but I can't  
21 recall with certainty.

22 Q Are you aware that Nestle owns the Gerber  
23 baby food company?

24 A Yes.

25 Q Do you have a recollection as to whether or

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2 not the resolution of this proceeding had anything to  
3 do with respect to the limitation of goods with  
4 respect to the Gerber baby food company?

5 A Yes, now I remember. Their -- we did work  
6 out an agreement with them. They were primarily  
7 targeting infants and small children for these  
8 products, so they agreed to limit it to that.

9 Q Is it fair to say that generally the Smart  
10 Ones product line is not targeted towards infants and  
11 children?

12 A That's correct.

13 Q Okay. And let me hand you what's been  
14 marked as Exhibit 12. And can you identify Exhibit 12  
15 for the record, please?

16 (Thereupon, Opposer's Exhibit No. 12 was  
17 marked for identification.)

18 A Yes. The first couple of pages are an  
19 electronic printout from the U.S. Patent and Trademark  
20 Office's trademark trial and appeal board's electronic  
21 system regarding an opposition that Heinz filed  
22 against Sears Brands' trademark application for Smart  
23 Sense, and the remaining pages are a copy of the  
24 notice of opposition.

25 Q And what were the goods that Sears was

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2 attempting to register that were potentially  
3 problematic in connection with the Smart Sense  
4 trademark.

5 A Class 30, they filed for a variety of  
6 different goods. Do you want me to read them?

7 Q Why don't you just identify for me the  
8 goods, if any, that you deemed potentially  
9 problematic.

10 A Definitely the macaroni and cheese. As I  
11 said before, Heinz has a Smart Ones macaroni and  
12 cheese product, also the packaged entrees consisting  
13 primarily of pasta.

14 Q And was this matter resolved?

15 A It was.

16 Q Do you have a recollection upon the terms  
17 it was resolved with Sears brands?

18 A We settled. I do not recall the exact  
19 terms of the settlement, but it should be in the  
20 settlement agreement.

21 Q Okay.

22 MR. FRAELICH: Let's go off the record.

23 (Recess taken.)

24 Q Let me hand you what's been marked as  
25 Exhibit 13 and ask you to identify that document for

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2 the record, please.

3 (Thereupon, Opposer's Exhibit No. 13 was  
4 marked for identification.)

5 A The first couple pages of the document are  
6 an electronic printout from the U.S. Patent and  
7 Trademark Office's trademark trial and appeal board's  
8 electronic system regarding an opposition Heinz filed  
9 against Food Lion's trademark application for Smart  
10 Option, and the remaining pages are a copy of the  
11 actual notice of opposition.

12 Q What is Food Lion?

13 A It is a retail grocery store.

14 Q Is it your understanding this was a private  
15 label of Food Lion?

16 A Yes.

17 Q Were there goods identified in the  
18 application that Food Lion was attempting to register  
19 with that Smart Option that you deemed to be  
20 problematic?

21 A Yes, in class 30 for frozen pizza.

22 Q What was the basis for the opposition, in  
23 your opinion?

24 A We sell frozen pizza, so the goods were  
25 identical, and then the confusing similarity between

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2 Smart Option and Smart Ones.

3 Q Do you have a recollection if this matter  
4 was resolved or not?

5 A It was, we settled.

6 Q Do you remember generally what the terms of  
7 the settlement were?

8 A I believe one thing is they were planning  
9 to use it not in connection with a nutritional type  
10 product, but with a less expensive item, so it was  
11 going to be positioned a lot differently.

12 I believe we agreed they could use it, but  
13 only with certain parameters in the marketplace that  
14 we thought would decrease any likelihood of confusion.

15 Q Let me hand you what's been marked as  
16 Exhibit 14, and tell me if you can identify that,  
17 please?

18 (Thereupon, Opposer's Exhibit No. 14 was  
19 marked for identification.)

20 A Yes. The first couple of pages are an  
21 electronic printout from the U.S. Patent and Trademark  
22 Office's trademark trial and appeal board's electronic  
23 system regarding an opposition that Heinz filed  
24 against Deacon, D-e-a-c-o-n, Dog Brand's application  
25 for Smart Fry, f-r-y, and the remaining pages are a



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2 copy of the actual notice of opposition.

3 Q Okay. And looking at the goods that were  
4 applied for by Deacon Dog brands, can you tell me what  
5 the goods were that you deemed potentially  
6 problematic?

7 A I think it's pretty much all of them in  
8 class 29, frozen entrees, packaged entrees, frozen  
9 appetizers, packaged appetizers, frozen side dishes,  
10 packaged side dishes.

11 Q And do you have a recollection as to  
12 whether this matter was resolved or not?

13 A It was, I believe they withdrew their  
14 application.

15 Q To your knowledge, did the application  
16 filed by Deacon Dog Brands ever register?

17 A To my knowledge, I don't think it did.

18 Q I am going to hand you what's been marked  
19 as Exhibit 15. Tell me if you can identify that for  
20 the record, please?

21 (Thereupon, Opposer's Exhibit No. 15 was  
22 marked for identification.)

23 A Yes. The first couple of the pages are an  
24 electronic printout from the U.S. Patent and Trademark  
25 Office's trademark trial and appeal board's electronic

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2 system regarding an opposition filed by Heinz against  
3 Shining Ocean's application for Smart Salmon, and the  
4 remaining pages are a copy of the actual notice of  
5 opposition.

6 Q Can you tell me -- can you recite the goods  
7 and services that Shining Ocean was attempting to  
8 register in connection with the Smart Salmon  
9 trademark?

10 A Frozen or refrigerated salmon filet with  
11 sauce.

12 Q Do you have a recollection as to whether or  
13 not this matter was resolved or not?

14 A It was.

15 Q And can you tell me the terms?

16 A I believe they agreed to withdraw the  
17 application.

18 Q Let me hand you what's been marked as  
19 Exhibit 16, and please identify that for the record?

20 (Thereupon, Opposer's Exhibit No. 16 was  
21 marked for identification.)

22 A The first couple of pages are a printout  
23 from the U.S. Patent and Trademark Office's trademark  
24 trial and appeal board's electronic system regarding  
25 an opposition that was filed by Heinz against Conagra,

1 SABRINA HUDSON

2 C-o-n-a-g-r-a, Foods' application for Smart Breakfast,  
3 and the remaining pages are a copy of the actual  
4 notice of opposition.

5 Q And could you tell me the goods that  
6 Conagra was attempting to register in connection with  
7 Smart Breakfast that you deemed to be problematic?

8 A English muffin sandwiches, bagel  
9 sandwiches, croissant sandwiches, breakfast pizza,  
10 breakfast burritos, breakfast wraps, muffins, cinnamon  
11 rolls and bakery goods.

12 Q Why did you deem those goods to be  
13 problematic?

14 A We have English muffin sandwiches and we  
15 have breakfast wraps.

16 Q And do you have a recollection as to  
17 whether or not this matter was resolved or not?

18 A It was.

19 Q And can you -- do you recall the terms upon  
20 which it was resolved?

21 A I believe they agreed to withdraw their  
22 application.

23 Q Let me hand you what's been marked as  
24 Exhibit 17.

25 Tell me if you could identify that for the

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2 record, please?

3 (Thereupon, Opposer's Exhibit No. 17 was  
4 marked for identification.)

5 A Yes, the first couple of pages are  
6 electronic printout from the U.S. Patent and Trademark  
7 Office's trademark trial and appeal board's electronic  
8 system regarding an opposition Heinz filed against  
9 Redi, R-e-d-i, hyphen, Quick's trademark application  
10 for the mark Smart Burrito, and the remaining pages  
11 are a copy of the actual notice of opposition.

12 Q And can you identify for me the goods that  
13 Redi-Quick was seeking to register in connection with  
14 the Smart Burrito trademark?

15 A Burritos.

16 Q Why did you oppose this application?

17 A We believed it was -- the likelihood to  
18 cause confusion with our Smart Ones' registration,  
19 smart followed by the generic term burrito, and also  
20 because we have Mexican style type products in the  
21 Smart Ones line including quesadillas and wraps.

22 Q Do you have a recollection as to whether or  
23 not this matter resolved or not?

24 A It was resolved. I think it was settled  
25 and they agreed to withdraw the application.

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2 Q Okay. Let me hand you what's been marked  
3 as Opposer's Exhibit 18, and please identify that for  
4 the record?

5 (Thereupon, Opposer's Exhibit No. 18 was  
6 marked for identification.)

7 A The first couple of pages are an  
8 electronic copy of the U.S. Patent and Trademark  
9 Office's trademark trial and appeal board's electronic  
10 system regarding an opposition Heinz filed against  
11 Rich Products' trademark application for Smarter  
12 Choices, and the remaining pages are a copy of the  
13 actual notice of opposition.

14 Q Could you tell me the goods that Rich  
15 Products was seeking to register in connection with  
16 the Smarter Choices trademark in this application?

17 A Prepared, frozen or refrigerated <sup>entrees</sup>consisting  
18 primarily of shrimp and seafood, frozen or  
19 refrigerated shrimp and seafood.

20 Q What about that description did you find  
21 potentially problematic?

22 A We thought the mark itself was problematic  
23 when used in connection with goods that directly  
24 overlapped with our goods, which is frozen entrees.

25 Q Do you have a recollection as to whether or

1 SABRINA HUDSON

2 not this matter was resolved?

3 A It was, and I believe they agreed to  
4 withdraw their application.

5 Q Okay. Let me hand you what's been marked  
6 as Exhibit 19, and please identify that for the  
7 record?

8 (Thereupon, Opposer's Exhibit No. 19 was  
9 marked for identification.)

10 A The first couple pages are an electronic  
11 printout from the U.S. Patent and Trademark Office's  
12 trademark trial and appeal board's electronic system  
13 regarding an opposition filed by Heinz against New  
14 World Pasta Company's trademark application for the  
15 mark Smart Taste, and the remaining pages are the  
16 actual notice of opposition.

17 Q Can you identify for me the goods that New  
18 World Pasta was attempting to register in connection  
19 with the Smart Taste trademark?

20 A Yes, pasta, sauce, prepared or packaged  
21 meals consisting primarily of pasta and containing  
22 sauce.

23 Q Did you deem all of the goods in that  
24 description to be problematic or just some of them?

25 A Mainly just the prepared or packaged meals.

1 SABRINA HUDSON

2 Q Do you have a recollection as to whether or  
3 not this opposition was resolved?

4 A It was.

5 Q Do you remember the terms for the  
6 resolution?

7 A We entered into a settlement agreement. I  
8 do not remember the exact terms, but they will be  
9 included in that settlement agreement. I do believe  
10 they agreed to remove the prepared or packaged meals  
11 from the application.

12 Q Okay. Let me hand you what's been marked  
13 as Exhibit 20, and if you could, identify that for the  
14 record, please?

15 (Thereupon, Opposer's Exhibit No. 20 was  
16 marked for identification.)

17 A The first couple of pages are an electronic  
18 printout from the U.S. Patent and Trademark Office's  
19 trademark trial and appeal board's electronic system  
20 regarding an opposition Heinz filed against  
21 Cherrydale, C-h-e-r-r-y-d-a-l-e, Manufacturing's  
22 application for SMARTON'S, S-M-A-R-T-O-N'S.

23 Q What were the goods that Cherrydale  
24 Manufacturing were seeking to register in connection  
25 with the SMARTON'S trademark?

1 SABRINA HUDSON

2 A Chocolate based, ready to eat food bars,  
3 grain based food bars, granola based snack bars, ready  
4 to eat cereal derived food bars, toaster pastries,  
5 chocolate and candy.

6 Q What was the basis for the opposition that  
7 **SMARTON'S**  
8 *SH* Heinz filed against the SMARTON's trademark?

8 A We were concerned of a likelihood of  
9 confusion, dilution with our Smart Ones mark, mainly  
10 because the marks are almost identical.

11 Q Do you recall how this matter was resolved,  
12 if it was?

13 A I believe they agreed to withdraw their  
14 application.

15 Q Your understanding is that SMARTON'S never  
16 registered?

17 A That's correct.

18 Q Let me show you what's been marked as  
19 Opposer's Exhibit 21. Please identify that for the  
20 record.

21 (Thereupon, Opposer's Exhibit No. 21 was  
22 marked for identification.)

23 A The first couple pages are an electronic  
24 printout from the U.S. Patent and Trademark Office  
25 trademark trial and appeal board's electronic system





1 SABRINA HUDSON

2 (Thereupon, Opposer's Exhibit No. 22 was  
3 marked for identification.)

4 A The first couple of pages are an electronic  
5 printout from the U.S. Patent and Trademark Office's  
6 trademark trial and appeal board's electronic system  
7 regarding an opposition that was filed by Heinz  
8 against Unilever, U-n-i-l-e-v-e-r's application for  
9 Smart Solutions, and the remaining pages are a copy of  
10 the notice of opposition.

11 Q And can you identify for me the goods that  
12 Unilever was seeking to register?

13 A Prepared or packaged side dishes, pasta or  
14 rice for retail sale.

15 Q Do you recall whether or not Unilever ever  
16 responded to the notice of opposition?

17 A I don't think they did.

18 Q As a result of that, do you know what  
19 action the trademark trial and appeal board took?

20 A They withdrew the application or marked it  
21 abandoned.

22 Q Let me hand you what's been marked as  
23 Exhibit 23.

24 I would ask you to identify it for the  
25 record, please.

1 SABRINA HUDSON

2 (Thereupon, Opposer's Exhibit No. 23 was  
3 marked for identification.)

4 A The first couple pages are an electronic  
5 printout from the U.S. Patent and Trademark Office's  
6 trademark trial and appeal board's electronic system  
7 regarding an opposition Heinz filed against Conagra  
8 Foods' application for Smart Bowls, and the remaining  
9 pages are a copy of the notice of opposition.

10 Q What were the goods that Conagra was  
11 seeking to register in connection with the Smart Bowls  
12 trademark?

13 A Frozen entrees consisting primarily of a  
14 soy-based meat substitute and frozen entrees  
15 consisting primarily of pasta or rice.

16 Q What about those goods did you deem to be  
17 problematic?

18 A They directly overlap with our goods.

19 Q Do you have a recollection as to whether or  
20 not the matter was resolved?

21 A Yes, I believe they agreed to withdraw  
22 their application.

23 Q In connection with the opposition  
24 proceedings filed by Heinz that we just dealt with  
25 over the course of the last hour, were you involved in

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2 most of those proceedings?

3 A I believe so, yes.

4 Q Based upon the oppositions that were filed,  
5 are you able to discern a theme in connection with the  
6 basis for Heinz's objection to the registration for  
7 the trademarks described in the prior exhibits?

8 A Yes.

9 Q How would you describe that theme?

10 A Well, we first, as I mentioned, we analyze  
11 the issue and look at the similarity of the marks, and  
12 if the marks are almost identical, then even when the  
13 goods may not directly overlap with ours, we generally  
14 believe that that's too close and that there is a risk  
15 of a likelihood of confusion and dilution.

16 In those cases, we generally oppose. If  
17 the marks are not identical or almost identical, then  
18 we look at the goods, and when the goods are  
19 identical, we -- the same thing, we believe that there  
20 is a likelihood of confusion or dilution and we  
21 generally oppose.

22 Q With respect to the applicants and the  
23 oppositions we just discussed, could some of them be  
24 described as small entities or individuals?

25 A Yes.

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2 Q Could some of them be described as medium  
3 sized entities?

4 A Yes.

5 Q And are some of them large corporations?

6 A Yes, Unilever, Conagra, Nestle.

7 Q And are those three companies that you just  
8 described considered to be large multi-national  
9 corporations?

10 A Yes.

11 Q And in negotiating the resolution of the  
12 oppositions, was there a recognition by these  
13 applicants that the use of the word "smart" in  
14 connection with products that overlapped Heinz was  
15 problematic or not?

16 MS. WILBERT: Objection, foundation.

17 A I believe so, yes.

18 Q Why do you say that?

19 A Well, I think, you know, they -- when you  
20 are entering into a settlement agreement, one thing  
21 you look at is the other party's rights and whether or  
22 not you -- they have prior rights and, you know, I  
23 would think if the other party did not have rights or  
24 you didn't believe they had good rights, that you  
25 wouldn't have entered into a settlement agreement.

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2 Q Is this something that you do as a  
3 consequence of your employment responsibilities is  
4 evaluate another party's rights in determining what  
5 you can and cannot do in connection with the  
6 trademark?

7 A Yes. Part of my responsibilities is not  
8 only doing that with oppositions, but doing that with,  
9 you know, when we -- when the business people want to  
10 use a mark, we do a trademark search.

11 And as part of that, we review search  
12 reports and we have to analyze, you know, is there  
13 another mark that may object, and if they do object,  
14 what is -- what are our arguments and what are the  
15 strengths for those arguments.

16 Q Have there been occasions where you have  
17 selected a trademark and then you subsequently decided  
18 not to use that trademark because of another party's  
19 objection?

20 A Yes.

21 Q Okay. And did you make that assessment  
22 based upon the strength of the other party's rights?

23 A Yes.

24 Q And in determining what the strengths of  
25 the other party's rights were, what are some of the

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2 criteria you use in determining the strength of the  
3 other party's rights?

4 A I think you look at the DuPont factors, the  
5 likelihood of confusion factors, you look at the  
6 similarity of the marks, the similarity of the goods,  
7 the strength of the other party's marks, actual  
8 confusion, similarity in marketing channels,  
9 *SSH* <sup>consumers</sup> sophistication of the consumer's, are the goods  
10 expensive or inexpensive.

11 Q Okay. Prior to your employment with Heinz,  
12 you practiced with a firm; correct?

13 A Yes.

14 Q What was the name of that firm?

15 A It's now called K&L Gates.

16 Q Your practice centered upon what type of  
17 work?

18 A Primarily trademark work.

19 Q Subsequently when you started working for  
20 Heinz, you had responsibilities that involved what  
21 type of work, primarily?

22 A My primary responsibilities was handling  
23 all, matters related to the company's global  
24 trademarks.

25 Q How many years would you say that you have

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2 been working on trademark matters since the time you  
3 got out of law school?

4 A Over 12.

5 Q Okay. Let me hand you what's been marked  
6 as Exhibit 24, and ask you if you can identify that  
7 for the record?

8 (Thereupon, Opposer's Exhibit No. 24 was  
9 marked for identification.)

10 A Yes. The first couple of pages are an  
11 electronic printout from the U.S. Patent and Trademark  
12 office's trademark trial and appeal board's electronic  
13 database regarding an opposition that was filed by GFA  
14 Brands, Inc. against Radlo, R-a-d-l-o, Foods, its  
15 trademark application for the mark Smart Goodness, and  
16 the remaining pages are the actual copy of the actual  
17 notice of opposition.

18 Q What were the goods that Radlo Foods was  
19 seeking to register in connection with the Smart  
20 Goodness trademark?

21 A Eggs, milk, milk products excluding ice  
22 cream, ices, milk and frozen yogurt, egg substitute,  
23 processed food products, namely soy oils.

24 Q Okay. And the opposer in this opposition  
25 proceeding is who?



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2 A GFA Brands, Inc.

3 Q Is that the same company that's the  
4 applicant in the current proceeding that you're  
5 involved in?

6 A Yes.

7 Q And what action did GFA take with respect  
8 to the Smart Goodness application?

9 MS. WILBERT: Objection, foundation.

10 A They opposed it.

11 Q Having reviewed the notice of opposition,  
12 are you able to discern the basis for GFA's opposition  
13 for the Smart Goodness application?

14 A They are claiming priority and likelihood  
15 of confusion.

16 Q Confusion with what trademark?

17 A Their Smart Balance trademark.

18 Q What are the similarities between the Smart  
19 Goodness trademark and Smart Balance trademark that  
20 GFA was concerned about with respect to the trademarks  
21 themselves?

22 MS. WILBERT: Objection, foundation.

23 A The trademarks, they both start with the  
24 word "smart".

25 Q Does it appear to you that there is an

1 SABRINA HUDSON

2 overlap between the goods in this application and the  
3 goods that GFA uses the Smart Balance trademark in  
4 connection with?

5 MS. WILBERT: Objection, foundation.

6 A Yes. The applicant filed for soy oils, and  
7 GFA, it appears their registrations cover shortening,  
8 low fat and non-fat shortening and vegetable oils.

9 Also, they have a registration, actually it  
10 looks like at the time it was an application for Smart  
11 Balance for milk, egg substitute, and those are goods  
12 covered by this application.

13 And they also have what appears to be an  
14 application for eggs.

15 Q Okay. Generally, as an experienced  
16 trademark attorney, what do you see overall as the  
17 basis for GFA's opposition for the trademark?

18 A Likelihood of confusion based primarily on  
19 the similarity of goods and the similarity of marks.

20 Q Let me hand you what's been marked as  
21 Exhibit 25 and ask you to look through that document  
22 for me, please.

23 Can you describe what it is for the record?

24 (Thereupon, Opposer's Exhibit No. 25 was  
25 marked for identification.)

1 SABRINA HUDSON

2 A Yes. The first page is an electronic  
3 printout from the U.S. Patent and Trademark Office's  
4 trademark trial and appeal board's system regarding an  
5 opposition that GFA Brands, Inc. filed against Healthy  
6 Delight Foods' trademark application for Smart, the at  
7 symbol, Heart, H-e-a-r-t, and the remaining pages are  
8 a copy of the notice of opposition.

9 Q And are you able to tell from this document  
10 what goods Healthy Delight Foods was seeking to  
11 register in connection with the Smart@Heart trademark?

12 A Mayonnaise.

13 Q Are you able to discern based upon these  
14 documents what the basis was for GFA's opposition of  
15 the Smart@Heart trademark?

16 A Yes, GFA is claiming for grounds of  
17 opposition priority and likelihood of confusion.

18 Q And what are the issues with the  
19 Smart@Heart trademark that GFA deemed to be  
20 problematic with respect to the trademark?

21 A Well, looking at the two marks, they both  
22 begin with "smart" and the application was filed for  
23 mayonnaise, and the opposition GFA cites and a  
24 registration that they own that covers mayonnaise, low  
25 fat and non-fat mayonnaise substitute, mayonnaise

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2 style dressings and salad dressings.

3 Q Let me hand you what's been marked as  
4 Opposer Exhibit 26, and tell me if you can identify  
5 what that is for the record?

6 (Thereupon, Opposer's Exhibit No. 26 was  
7 marked for identification.)

8 A Yes. The first two pages are an electronic  
9 printout from the U.S. Patent and Trademark Office's  
10 trademark trial and appeal board's electronic system  
11 regarding an opposition that GFA Brands, Inc. filed  
12 against Conagra Foods' trademark application for  
13 Smartcakes!, one word, with an exclamation point, and  
14 the remaining pages are a copy of the notice of  
15 opposition.

16 Q Conagra Foods, is that an entity that Heinz  
17 has been involved in trademark oppositions with  
18 before?

19 A Yes.

20 Q Can you tell me what trademark Heinz was  
21 asserting in connection with those oppositions?

22 A Smart Ones.

23 Q And was the basis -- what was the basis for  
24 the assertion of the opposition against Conagra in  
25 those matters?

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2 A In Heinz's Smart Ones matter, the  
3 likelihood of confusion and I believe -- I would have  
4 to look back, but I believe it may be dilution, as  
5 well.

6 Q Could you tell me the goods that Conagra  
7 was seeking to register in connection with the  
8 Smartcakes! registration?

9 A Ready to eat popcorn products, namely  
10 popped popcorn, popcorn cakes and popcorn balls.

11 Q And what action did GFA Brands take with  
12 respect to the Conagra application?

13 A They filed an opposition, and they are  
14 asserting as grounds for that opposition priority and  
15 likelihood <sup>of</sup> for confusion. SJH

16 Q Based upon your reading for the notice of  
17 opposition, what was the basis for the opposition?  
18 What were the reasons for the opposition?

19 A I think they are claiming likelihood of  
20 confusion with their Smart Balance mark based on the  
21 similarity of the marks, both contain "smart", and the  
22 overlap of the goods.

23 GFA Brands owns a U.S. registration for the  
24 mark Smart Balance for popped and processed popcorn.

25 Q Let me hand you what's been marked as

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2 Exhibit 27, and ask you to please identify what that  
3 is for the record?

4 (Thereupon, Opposer's Exhibit No. 27 was  
5 marked for identification.)

6 A The first page is an electronic printout  
7 from the U.S. Patent and Trademark Office's trademark  
8 trial and appeal board's electronic system regarding  
9 an opposition that GFA Brands, Inc. filed against  
10 Conagra Brands, Inc.'s trademark application for Smart  
11 Chili.

12 The second page appears to be a letter that  
13 counsel for GFA Brands sent to the trademark trial and  
14 appeal board with the notice of opposition, and the  
15 remaining pages are a copy of the notice of  
16 opposition.

17 Q What were the goods that Conagra was  
18 seeking to register in connection with Smart Chili;  
19 can you tell?

20 A Vegetable based meat substitutes and frozen  
21 entrees containing vegetable based meat substitutes.

22 Q And are you able to discern from the notice  
23 of opposition what trademark registrations that GFA  
24 was asserting against Conagra brands in this  
25 opposition?

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2 A Yes, they have several ones that they  
3 identify.

4 Q What are the trademarks?

5 A Smart Balance, Smart Oil, Smart Cow, Smart  
6 Spread, Smart Squeeze, Smart Beat, B-e-a-t, Smart  
7 Slices, Smart Mayo, Smart Balance Omega.

8 Q And with respect to those registrations  
9 that GFA was asserting in this opposition, what do  
10 they have in common?

11 A They all begin with "smart".

12 Q Let me hand you what's been marked as  
13 Exhibit 28, and ask you to identify that for the  
14 record, please?

15 (Thereupon, Opposer's Exhibit No. 28 was  
16 marked for identification.)

17 A The first page is an electronic printout  
18 from the U.S. Patent and Trademark Office's trademark  
19 trial and appeal board's electronic system regarding  
20 an opposition that GFA Brands, Inc. filed against  
21 Ripon, R-i-p-o-n, Foods' application for the mark  
22 Smart Bake, and the remaining pages seem to be copies  
23 of the notice of opposition.

24 Q And I apologize, at least my exhibit  
25 appears to be somewhat cropped at the end, I don't

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2 have a clear copy of the notice of opposition; do you?

3 A No, I just have the -- it's cropped a  
4 little bit. I think on the left-hand side, although,  
5 it may be complete.

6 Q Let me ask you to turn to the last page of  
7 the exhibit. And are you able to discern what Ripon  
8 Foods they were seeking to register in connection with  
9 Smart Bake?

10 A Cookies.

11 Q What action did GFA take with respect to  
12 Ripon's application to register Smart Bake in  
13 connection with cookies?

14 A They opposed.

15 Q Okay. Let me hand you what's been marked  
16 as Exhibit 29, and ask you to identify that for the  
17 record.

18 (Thereupon, Opposer's Exhibit No. 29 was  
19 marked for identification.)

20 A The first page is an electronic copy from  
21 the U.S. Patent and Trademark Office's trademark trial  
22 and appeal board's electronic system regarding an  
23 opposition that Fitness Foods, Inc. and GFA Brands  
24 filed against Conagra Brands' trademark application  
25 for the mark Smart Nuggets, and the remaining pages





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2 "smart" and the overlap of the goods.

3 Q Let me hand you what's been marked as  
4 Exhibit 30 and ask you to identify that for the  
5 record.

6 (Thereupon, Opposer's Exhibit No. 30 was  
7 marked for identification.)

8 A The first page is an electronic printout  
9 from the U.S. Patent and Trademark Office's trademark  
10 trial and appeal board's electronic system regarding  
11 an opposition filed by Fitness Foods, Inc. and GFA  
12 Brands, Inc. against Conagra Brands' trademark  
13 application for the mark Smart Yogurt, and the  
14 remaining pages appear to be a copy of the notice of  
15 opposition and the cover letter from opposer's counsel  
16 to the trademark office regarding the opposition.

17 Q Are you able to determine from these papers  
18 what goods Conagra Brands was seeking to register in  
19 connection with the Smart Yogurt trademark?

20 A Soy based food products used as yogurt  
21 substitute.

22 Q And can you tell me what trademarks were  
23 being asserted by GFA in connection with this  
24 opposition proceeding against Conagra?

25 A Smart Balance, Smart Oil, Smart Cow, Smart

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2 Spread, Smart Squeeze, Smart Beat, Smart Slices, Smart  
3 Mayo.

4 Q What if anything do those trademarks have  
5 in common?

6 A They all begin with "smart".

7 Q Are you able to discern from these papers  
8 what the basis was for GFA's opposition to the  
9 registration with the Smart Yogurt trademark?

10 A Yes. In paragraph 13, they are alleging  
11 that the mark Smart Yogurt is similar to the  
12 trademarks of opposers we just mentioned.

13 Q Okay. Let me hand you what's been marked  
14 as Exhibit 31 and ask you to identify that for the  
15 record.

16 (Thereupon, Opposer's Exhibit No. 31 was  
17 marked for identification.)

18 A The first page is an electronic printout  
19 from the U.S. Patent and Trademark Office's trademark  
20 trial and appeal board's electronic system regarding  
21 an opposition that was filed by Fitness Foods, Inc.  
22 and GFA Brands, Inc. against Conagra's Brands'  
23 application for the mark Smart Lunch.

24 The remaining pages are a copy of the  
25 notice of opposition and the cover letter from

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2 opposer's counsel to the trademark office enclosing  
3 the notice of opposition.

4 Q Are you able to determine based upon the  
5 notice of opposition what goods Conagra was seeking to  
6 register in connection with the mark Smart Lunch?

7 A Lunch entrees consisting primarily of soy  
8 based meat substitutes and soy based cheese  
9 substitutes.

10 Q What marks were being asserted by GFA  
11 Brands in this opposition against Conagra Brands  
12 application for Smart Lunch?

13 A Smart Balance, Smart Oil, Smart Cow, Smart  
14 Spread, Smart Squeeze, Smart Beat, Smart Slices, Smart  
15 Mayo.

16 Q And what if anything do those trademarks  
17 have in common?

18 A They begin with "smart".

19 Q Are you able to discern the basis for GFA's  
20 opposition to the registration of the Smart Lunch  
21 trademark in this document?

22 A Yes, in paragraph 13, they allege that the  
23 Smart Lunch mark is confusingly similar to the  
24 trademarks of opposers.

25 Q Let me hand you what's been marked as

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2 Exhibit 32 and ask you to identify that for the  
3 record, please.

4 (Thereupon, Opposer's Exhibit No. 32 was  
5 marked for identification.)

6 A The first page is an electronic printout  
7 from the U.S. Patent and Trademark Office's trademark  
8 trial and appeal board's electronic system regarding  
9 an opposition that was filed by Fitness Foods, Inc.  
10 and GFA Brands, Inc. against Conagra Brands' trademark  
11 application for the mark Smart Pudding.

12 The rest of the pages are a copy of the  
13 notice of opposition along with counsel's cover letter  
14 enclosing the notice of opposition to the trademark  
15 office.

16 Q What were the goods Conagra was seeking to  
17 register in connection with the Smart Pudding  
18 trademark?

19 A Soy based food products used as pudding  
20 substitute.

21 Q What were the trademarks that GFA was  
22 asserting in the opposition against the registration  
23 of that trademark?

24 A Smart Balance, Smart Oil, Smart Cow, Smart  
25 Spread, Smart Squeeze, Smart Beat, Smart Slices, Smart

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2 Mayo.

3 Q What if anything do those trademarks have  
4 in common?

5 A They begin with "smart".

6 Q Are you able to discern the basis for GFA's  
7 objection to the registration of the Smart Pudding  
8 trademark?

9 A Yes. In paragraph 13, GFA alleges that the  
10 Smart Pudding mark is confusingly similar to the  
11 trademarks of opposers.

12 Q Let me hand you what's been marked as  
13 Exhibit 33 and ask you if you can identify that for  
14 the record, please.

15 (Thereupon, Opposer's Exhibit No. 33 was  
16 marked for identification.)

17 A The first page is an electronic copy from  
18 the U.S. Patent and Trademark Office's trademark trial  
19 and appeal board's electronic system regarding an  
20 opposition Fitness Foods, Inc. and GFA Brands, Inc.  
21 filed against an individual, Joseph Michael O'Neil's  
22 trademark application for the mark Smart Juice, and  
23 the remaining pages appear to be more documents from  
24 the U.S. Patent and Trademark Office's electronic  
25 database.

1 SABRINA HUDSON

2 Q Are you able to determine from the second  
3 page of this document when the application was filed?

4 A June 10th, 1999.

5 Q From the first page, can you tell when was  
6 the filing date of the opposition?

7 A June 28, 2001.

8 Q And are you able to discern from these  
9 documents what the goods were that were being applied  
10 for in connection with Smart Juice?

11 A Fruit juices.

12 Q Let me hand you what's been marked as  
13 Exhibit 34 and ask you to identify this document for  
14 the record.

15 (Thereupon, Opposer's Exhibit No. 34 was  
16 marked for identification.)

17 A The document is pages -- electronic  
18 printouts from the U.S. Patent and Trademark Office's  
19 trademark trial and appeal board's electronic systems  
20 regarding an opposition that Fitness Foods, Inc. and  
21 ~~filed~~ GFA Brands, Inc. file against Procter & Gamble's  
22 trademark application for the mark CookSmart, one  
23 word.

24 Q Are you able to tell what the application  
25 filing date was for the CookSmart trademark?

1 SABRINA HUDSON

2 A July 29th, 1999.

3 Q What was the filing date of the notice of  
4 opposition by Fitness Foods and GFA Brands?

5 A March 2nd, 2000.

6 Q Are you able tell what the goods were that  
7 were to be associated with the CookSmart trademark?

8 A Edible oil in liquid form.

9 Q Let me hand you what's been marked as  
10 Exhibit 35.

11 (Thereupon, Opposer's Exhibit No. 35 was  
12 marked for identification.)

13 A Okay.

14 Q And ask you if you have seen these  
15 documents before?

16 A Yes.

17 Q Before I start questioning you about  
18 Exhibit 35, let me ask you a few questions about the  
19 GFA oppositions we have just discussed.

20 A Okay.

21 Q You indicated that there was a theme  
22 associated with the oppositions that Heinz has filed  
23 in the past that involved the Smart Ones trademark?

24 A Yes.

25 Q And what was that theme again?



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2 A When the marks are identical or almost  
3 identical and when there is -- and/or when there is a  
4 "smart" mark that's filed and there is an overlap of  
5 the goods.

6 Q Okay. And based upon your review of the  
7 GFA opposition papers, as an experienced trademark  
8 attorney, can you discern a theme associated with the  
9 oppositions GFA has filed against third parties?

10 MS. WILBERT: Objection, foundation.

11 A Yes.

12 Q What theme would you believe is represented  
13 there?

14 A They appear to file oppositions against a  
15 lot of different marks that started or included  
16 "smart", not only in connection with their product  
17 categories but actually in connection with other  
18 product categories.

19 Q Is that approach by GFA and the trademark  
20 trial appeal board similar or dissimilar with the  
21 approach that Heinz takes with respect to its Smart  
22 Ones trademark?

23 A Dissimilar.

24 Q How so?

25 A Well, as I said, they not only file for

1 SABRINA HUDSON

2 applications that have an overlap of goods, but other  
3 products in the grocery store that are not directly  
4 competing with their products.

5 Q As an experienced trademark attorney and  
6 someone who does similar work for Heinz, does there  
7 appear to be -- to be an attempt by GFA to keep third  
8 parties from using "smart" in connection with food  
9 products?

10 A To a certain extent, yes.

11 Q Upon what do you base that opinion?

12 A They opposed a lot of applications for  
13 trademarks that included "smart" for a variety of  
14 different goods.

15 Q Dating back to when, based upon the  
16 oppositions we have looked at today?

17 A I believe in the late 90s.

18 Q Let me draw your attention to Exhibit 35.  
19 Does Heinz consider the Smart Ones trademark to be a  
20 valuable brand?

21 A Yes very much so.

22 Q Why?

23 A As I said, we have owned the brand for over  
24 20 years, it's been one of our -- the products sold  
25 under that brand have high sales. One of them, I

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1 is  
2 believe it's from a sales volume perspective, one of  
3 the top selling products in the entire category, the brand's one of  
4 the top three of our U.S. food products, and just the  
5 equity that the brand carries and the connection it  
6 has with the health and wellness platform.

6 Q How does consumer awareness of the Smart  
7 Ones brand compare to other Heinz brands?

8           A           I think it's at the very top. As I said, I  
9 think it's one of the top three of our most recognized  
10 brands in the U.S.

11 Q Let me direct your attention to the first  
12 page of Exhibit 35. Are you able to tell me what  
13 publication this article appears to be from?

14           A           The Boston Globe.

15 Q What actually is the first page of  
16 Exhibit 35?

17           A           It is an article dated February 14th, 2013  
18   regarding an announcement that Heinz is going to be  
19   purchased by Warren Buffett's investment firm  
20   Berkshire Hathaway and 3G Capital.

21 Q What is the title of the article?

22           A       Buffett Part of Group to Buy Heinz in \$23  
23 billion deal.

24 Q Could you read into the record the first  
25 two paragraphs of the article?

1 SABRINA HUDSON

2 A "H.J. Heinz Company is being purchased by  
3 an investment group including billionaire investor  
4 Warren Buffett in a deal valued at \$23.3 billion. The  
5 ketchup company says it's the largest deal ever in the  
6 food industry. Heinz, based in Pittsburgh, also makes  
7 Classico spaghetti sauces, Ore-Ida Potatoes and Smart  
8 Ones frozen meals."

9 Q Do you have an opinion as to why those  
10 three brands were specifically mentioned in the first  
11 two paragraphs of the article?

12 A In addition to our Heinz brand, I would say  
13 they are probably the top four in the U.S.

14 Q Let me direct your attention to the second  
15 article, which starts on the fourth page of  
16 Exhibit 35. Tell me if you can discern what  
17 publication this article is from?

18 A It says SFGate.com, I believe that's the  
19 San Francisco newspaper.

20 Q And what is the title of the article?

21 A Warren Buffett Buying H.J. Heinz Company.

22 Q Do you see a paragraph beginning with Heinz  
23 Brands just below the middle of the page?

24 A Yes.

25 Q Would you please read that paragraph for

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2 me?

3 A "Heinz's brands have power with shoppers  
4 that takes years to create and have been able to raise  
5 prices even in the highly competitive grocery business  
6 says Brian Sozzi, chief equities analyst for NBG  
7 Productions."

8 Q And do you regard that to be an accurate  
9 statement?

10 A Yes.

11 Q Why?

12 A Because, you know, we do have brands that  
13 we have -- either ourselves have taken years to create  
14 and develop through product innovation and marketing  
15 and promoting those brands or have acquired strong  
16 brands, we continue to innovate and promote those  
17 brands, which allows us to be very competitive in the  
18 marketplace.

19 Q Okay. Based upon your experience with  
20 Heinz, how would you characterize the strength of the  
21 Smart Ones trademark?

22 A I would say it's very strong.

23 Q Why?

24 A Again, it's one of our top three brands in  
25 the U.S. Even though we are a global company, our

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2 largest business is our U.S. business, and it is one  
3 of our top three brands, probably not only in terms of  
4 sales, but also volume and also market recognition  
5 through our promotion and advertising program.

6 Q Are you familiar with the anti-dilution  
7 provisions of the Federal Lanham Act?

8 A Yes.

9 Q Are you familiar with the definition of  
10 fame that's set forth in those provisions?

11 A I am.

12 Q Based upon your understanding, do you  
13 believe the Smart Ones trademark is famous?

14 MS. WILBERT: Objection, undisclosed  
15 opinion testimony.

16 A I do.

17 Q Why?

18 A If you look at the factors that the courts  
19 have said and the statutes says you're supposed to  
20 <sup>for</sup> consider fame, I think the Smart Ones trademark meets  
21 a lot of those criteria.

22 One, it's been registered for a long time,  
23 it's been in use for over 20 years, that use has been  
24 continuous and exclusive. The amount of advertising,  
25 this is probably in the U.S. one of our most

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2 advertised brands. Right now, we have not only print  
3 advertising, in the past we have had TV advertising,  
4 radio advertising and we are very involved in social  
5 media right now.

6 We have a website that has a community of a <sup>with</sup>  
7 database of over 3 million consumers, we are on  
8 Facebook, we are on Pinterest, we also send monthly  
9 e-mails to everyone in our database.

10 So it's a highly advertised brand, high  
11 volume of sales, again, and I think all of those  
12 factors support a finding of fame.

13 Q When do you believe the Smart Ones  
14 trademark achieved this fame?

15 MS. WILBERT: Objection, undisclosed  
16 opinion testimony.

17 A I think a few years ago. I think over the  
18 last -- since I have been at Heinz, Heinz <sup>has</sup> as made a  
19 real effort to not only increase the development of  
20 the Smart Ones brand, it used to be a No. 3 brand in  
21 the category and I think it was a distant 3, it's now  
22 a strong No. 2 brand. That is definitely a byproduct  
23 of our innovation and quality development of the  
24 products, but also a lot of advertising that we put  
25 forth.

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2 There was a huge advertising campaign I  
3 think around 2003, 2004, TV advertising the woman in  
4 red, we highly promoted the product back then. I  
5 think all of that increased the well-known and fame  
6 status of the brand.

7 Q What is the woman in red?

8 A It was a campaign ,and I don't remember the  
9 specifics because I wasn't at Heinz, I just remember  
10 looking at historical documents since I have been at  
11 Heinz. It was a TV advertising campaign, I think that  
12 was also complimented with other types of advertising,  
13 print and things that talked -- you know, there was a  
14 woman in the <sup>ad</sup> who was dressed in red and it was in  
15 relation to our red packaging and things.

16 Q GFA filed its applications to register  
17 Smart Balance in November 2009. Was the smart Ones  
18 trademark famous before that date or after that date?

19 A I believe before.

20 MR. FRAELICH: No more questions.

21 MS. WILBERT: If we can maybe take a five  
22 minute break and maybe switch chairs or  
23 something.

24 MR. FRAELICH: Sure.

25 (Recess taken.)



1 SABRINA HUDSON

2 CROSS EXAMINATION

3 BY MS. WILBERT:

4 Q Hello. I am going to ask you a few  
5 questions about the topics you covered in your direct  
6 testimony.

7 You mentioned the DuPont factors when you  
8 were testifying earlier today. Channels of trade is  
9 one of the DuPont factors; correct?

10 A Yes.

11 Q And the Smart Ones brand is sold  
12 nationwide; correct?

13 A Yes.

14 Q And it's generally sold in the frozen foods  
15 section of super markets; correct?

16 A Yes.

17 Q I have just handed you what's been marked  
18 as GFA Exhibit 1. Could you please confirm for me  
19 that it bears production Nos. Heinz013400 through  
20 Heinz013503?

21 (Thereupon, Applicant's Exhibit No. 1 was  
22 marked for identification.)

23 A Yes.

24 MR. FRAELICH: Just to interrupt for a  
25 second, at one time, some of these materials were

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2 considered to be confidential. This is prior to  
3 the launch of the new packaging.

4 So it would be helpful if Sabrina could  
5 indicate whether or not this portion of the  
6 transcript and this document should still be  
7 considered confidential if it's designated as  
8 such on the Bates No. copies, I don't have strong  
9 feelings either way, but let's do that before she  
10 gets into too much testimony about the exhibit,  
11 if it's possible.

12 A I would still designate the document  
13 confidential. I may be able to still give testimony  
14 on some things that are not confidential, and it's up  
15 to you, I can identify them separately or we can treat  
16 the whole thing as confidential.

17 Q I am fairly certain that my line of  
18 questioning will not be confidential. So I would like  
19 to give you the opportunity at the end to designated  
20 if we need to, but let's keep the document, as you  
21 suggested with it's designation, and keep the  
22 testimony as a non-confidential?

23 A Okay.

24 Q Could you please turn to page Heinz103408?

25 A Okay.

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2 Q Before I ask any questions about that page,  
3 could you please generally confirm that Exhibit 1 is a  
4 document that was produced by Heinz in the course of  
5 this opposition proceeding?

6 A Yes.

7 Q And that this is a document titled Heinz  
8 2011 Focus Stellar Execution?

9 A Yes.

10 Q Does page Heinz013408 accurately identify  
11 some of the super markets in which products bearing  
12 the Smart Ones marks are sold?

13 A To my knowledge, yes.

14 Q So to your knowledge, Heinz sells products  
15 bearing the Smart Ones marks at Kroger's?

16 A Yes.

17 Q And continuing, for example, Heinz sells  
18 products bearing the Smart Ones trademark at Publix?

19 A Yes.

20 Q Could you please turn to Heinz013409?

21 A Okay.

22 Q Does Heinz, in fact, sell products bearing  
23 the Smart Ones trademark at Safeway?

24 <sup>do</sup>  
SJH A I don't believe so.

25 Q Does Heinz sell products bearing the Smart

1 SABRINA HUDSON

2 Ones trademark at SUPERVALU?

3 A I believe so, but I am not certain.

4 Q Given that SUPERVALU is included in this  
5 document, do you have any reason to believe that Smart  
6 Ones is not a product that is sold at SUPERVALU?

7 A Not at the time this document was created,  
8 I don't know about currently though. I don't have any  
9 reason to believe that we don't sell Smart Ones at  
10 SUPERVALU.

11 Q Does Heinz sell product bearing the Smart  
12 Ones trademark at Wal-Mart?

13 A Yes.

14 Q Okay. And Heinz sells products bearing the  
15 Smart Ones trademark at a variety of stores that are  
16 not included in this exhibit?

17 A Yes.

18 Q So for example, Heinz sells Smart Ones  
19 products at Costco, for example?

20 A I believe we have a small amount of sales  
21 at Costco, but I do believe so, yes.

22 Q And Heinz sells products bearing the Smart  
23 Ones trademark at Ahold?

24 A I don't know.

25 Q Do you know whether Heinz sells the Smart

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2 Ones products at Wakefern?

3 A I don't know.

4 Q Generally, you would agree though that  
5 Heinz sells products bearing the Smart Ones trademark  
6 in mass market stores such as Wal-Mart and Super  
7 Target?

8 A Yes.

9 Q And also sells in club stores such as  
10 Costco?

11 A I believe so, although I believe the sales  
12 in club are very small.

13 Q And that the majority of its sales are  
14 primarily through grocery stores, including chain  
15 stores; correct?

16 A Yes.

17 Q And Smart Ones has been sold in all of  
18 these stores nationally for over ten years; correct?

19 A Definitely, yes.

20 Q During your testimony earlier today you  
21 mentioned SKUs as well as some general product  
22 descriptions. I would like to talk to you for a few  
23 minutes about the types of products sold under the  
24 Smart Ones marks; are you familiar with the Heinz  
25 eatyourbest.com website?

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2 A I am.

3 Q I have handed you what's been marked as GFA  
4 Exhibit 2. Can you please confirm that this appears  
5 to be an accurate printout from the Heinz website?

6 (Thereupon, Applicant's Exhibit No. 2 was  
7 marked for identification.)

8 A Yeah, it appears to be.

9 Q And does Heinz sell under the Smart Ones  
10 trademark products under the Classic Favorites  
11 category that's shown here?

12 A Yes.

13 Q And do those products include pasta based  
14 products?

15 A Yes.

16 Q Do those products include any cream sauces?

17 A Yes, I think so.

18 Q I have handed you what's been marked as  
19 Exhibit GFA-3. Can you please confirm that this  
20 appears to be a printout from the Heinz website  
21 listing the Classic Favorite products that bear the  
22 Smart Ones trademark?

23 (Thereupon, Applicant's Exhibit No. 3 was  
24 marked for identification.)

25 A Yes.

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2 Q Is this an accurate list of the products  
3 sold under the Smart Ones trademark?

4 A It contains some of them. I would have to  
5 check with our business or actually do a review to  
6 make sure it contains all of them, but yes, these are  
7 products we do sell. I don't know if it's an  
8 exhaustive list or not.

9 Q Would the website be an accurate way to  
10 determine some of the products that are sold under the  
11 Smart Ones trademark?

12 A Yes.

13 Q Would the descriptions on the website be a  
14 general description of the type of product?

15 A Yes.

16 Q For example, No. 7, Creamy -- I am not  
17 going to say it right, the broccoli and chicken is  
18 described as being served in a creamy parmesan sauce;  
19 is that an accurate description of that product?

20 A I am sorry, which one are you looking at?

21 Q No. 6 down.

22 A And can you repeat your question, please?

23 Q It says the product description is a medley  
24 of pasta, broccoli florets and white meat chicken in a  
25 creamy parmesan sauce; is that an accurate description

1 SABRINA HUDSON

2 of that product?

3 A Yes.

4 Q Does GFA sell -- what does Heinz -- what  
5 types of products does Heinz sell in the Smart  
6 Delights category?

7 A Those are mostly our frozen desserts.

8 Q Do those frozen desserts contain dairy?

9 A Yes, they contain ice cream.

10 Q What types of products does Heinz sell  
11 using the Smart Ones trademark in the Smart Beginnings  
12 category?

13 A What you would consider mostly breakfast  
14 items.

15 Q Do the breakfast items that Heinz sell  
16 bearing the Smart Ones trademark contain eggs?

17 A Yes.

18 Q Earlier today, you testified that you are  
19 not aware of any confusion between the products sold  
20 bearing the Smart Ones mark and the products sold  
21 bearing the Smart Balance mark; is that correct?

22 A That's correct.

23 Q Are you aware -- so you're not aware of any  
24 confusion between the Smart Ones breakfast items and  
25 the Smart Balance egg products; correct?



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2 A Correct.

3 Q And you're not aware of any actual  
4 confusion between the Smart Ones ice cream products  
5 and the Smart Balance dairy products; correct?

6 A I wouldn't classify them as ice cream.

7 Q So you're not aware of any actual confusion  
8 between the Smart Ones frozen desserts containing ice  
9 cream and any of the Smart Balance milk products?

10 A I am not aware of any.

11 Q Are you aware of any confusion between the  
12 Smart Ones products and the Smart Balance popcorn  
13 products?

14 A No.

15 Q Are you aware of any confusion between the  
16 Smart Ones products and the Smart Balance products for  
17 oil?

18 A No.

19 Q Are you aware of any confusion between the  
20 Smart Ones products and the Smart Balance buttery  
21 spreads?

22 A No.

23 Q I have just handed you Exhibit GFA-4. Can  
24 you please confirm that this is a picture of a Prego  
25 HeartSmart roasted red pepper and garlic sauce?

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2 (Thereupon, Applicant's Exhibit No. 4 was  
3 marked for identification.)

4 A Yes, it appears to be.

5 Q You're not aware of any instances of actual  
6 confusion between any of the Smart Ones products and  
7 the Prego HeartSmart sauce; are you?

8 A No.

9 Q The court reporter has just handed you  
10 what's been marked as Exhibit GFA-5. Can you please  
11 confirm that Exhibit GFA-5 is an image of a product  
12 wrapper for Smart Gels?

13 (Thereupon, Applicant's Exhibit No. 5 was  
14 marked for identification.)

15 A It appears so, but I have never seen this  
16 before or the packaging before.

17 Q Are you aware of any instances of actual  
18 confusion between any of the Smart Ones products and  
19 Smart Gels as pictured in Exhibit 5?

20 A No.

21 Q The court reporter has just handed you  
22 what's been marked as GFA Exhibit 6.

23 Can you please confirm that GFA Exhibit 6  
24 is a photograph of the product package for Breyers  
25 Carb Smart?

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2 (Thereupon, Applicant's Exhibit No. 6 was  
3 marked for identification.)

4 A It appears so, yes.

5 Q And the product pictured is an ice cream  
6 bar?

7 A Yes.

8 Q Are you aware of any instances of actual  
9 confusion between products bearing the Smart Ones  
10 marks and the Breyers Carb Smart product?

11 A No.

12 Q I have just handed you what's been marked  
13 as GFA Exhibit 7. Can you please confirm that  
14 Exhibit 7 is a photograph of Smart Taste Pasta?

15 (Thereupon, Applicant's Exhibit No. 7 was  
16 marked for identification.)

17 A Yes, Ronzoni Smart Taste pasta.

18 Q Are you aware of any instances of actual  
19 confusion between any products bearing the Smart Ones  
20 trademark and Ronzoni's Smart Taste pasta?

21 A No.

22 Q Can you please confirm that GFA Exhibit 8  
23 is a photograph of Smart Water?

24 (Thereupon, Applicant's Exhibit No. 8 was  
25 marked for identification.)

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2 A Yes, Glaceau Smart Water.

3 Q Are you aware of any instances of actual  
4 confusion between Glaceau Smart Water and any of the  
5 Smart Ones products?

6 A No.

7 Q Are you aware of any instance of actual  
8 confusion between any products bearing the Smart Ones  
9 trademark and Kellogg's Smart Start cereal?

10 A No.

11 Q Who is Ms. Findlay?

12 A She is an employee of Heinz, and she has  
13 *SHN* been with <sup>the</sup> a company for a very long time. I know she  
14 was around when Smart Ones was introduced. I don't  
15 know how long she was around before that, so I don't  
16 know when she started with the company.

17 She has been involved with the Smart Ones  
18 part of the business pretty much I think the entire  
19 *SHN* time. Her role is <sup>has transitioned</sup> transitional a little bit now and  
20 she is more involved with some of our other licensing  
21 relationships.

22 Q Is Ms. Findlay somebody who would have an  
23 accurate history and understanding of the Smart Ones  
24 brand?

25 A Yes.

1 SABRINA HUDSON

2 Q Would she have an accurate history and  
3 understanding of the connotations that Heinz intends  
4 to convey with the Smart Ones brand?

5 A Yes.

6 Q And she is not designated to testify today  
7 because I believe her position has transitioned; what  
8 is her new position?

9 A I don't know the exact title, but she has  
10 less of a role on Smart Ones now and more on some of  
11 our other licensing relationships. We license a  
12 T.G.I. Friday's brand, and I know that she is involved  
13 in that relationship. And she has other  
14 responsibilities, I am not a hundred percent accurate  
15 what those are.

16 Q But in January of 2012, Ms. Findlay was  
17 active in the Smart Ones brand; correct?

18 A She is still active today, just not as big  
19 a role as she was at that time.

20 Q Balance and Ones are different words;  
21 correct?

22 A Yes.

23 Q Balance and Ones look different; correct?

24 A Yes.

25 Q Balance and Ones sound different; correct?

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2 A Yes.

3 Q Balance and Ones have different meanings in  
4 the dictionary; correct?

5 A I haven't looked in the dictionary to tell,  
6 but possibly. I don't even know if Ones is in the  
7 dictionary.

8 Q As we discussed, you're an attorney with  
9 experience in trademark matters, and you have some  
10 experience in trademark oppositions; correct?

11 A Yes.

12 Q You understand that a party has an  
13 obligation to disclose expert witnesses by a certain  
14 date in the proceedings; correct?

15 A Yes.

16 Q And you were not disclosed as an expert;  
17 correct?

18 A Not to my knowledge, no.

19 Q And you are here today to provide factual  
20 testimony; correct?

21 A Yes.

22 Q You are not an expert in this matter;  
23 correct?

24 MR. FRAELICH: Objection.

25 A Not a designated expert. I think I have a

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1 very strong knowledge of trademark law, I may be  
2 tooting my own horn to call myself an expert, but I  
3 think I have expertise in this area.

4 Q You did not prepare an expert disclosure?

5 A That's correct.

6 Q And your lawyers have not prepared an  
7 expert disclosure on your behalf?

8 A That's correct.

9 Q And you have not disclosed to us the sum  
10 total of any opinions you have about this case; have  
11 you?

12 A No, not except my testimony today.

13 Q Okay.

14 MS. WILBERT: Off the record.

15 MR. FRAELICH: She will read.

16 - - -

17 (Thereupon, at 11:14 o'clock a.m., the  
18 deposition was concluded.)

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Mr. Fraelich

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Ms. Wilbert

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SABRINA HUDSON

SIGNATURE PAGE

  
Sabrina Hudson

Subscribed and sworn to before me this

19th day of March, 2013

  
Notary Public

COMMONWEALTH OF PENNSYLVANIA

Notarial Seal

Virginia Sue Strawoet, Notary Public  
City of Pittsburgh, Allegheny County  
My Commission Expires March 27, 2016

MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

1 SABRINA HUDSON

2 CERTIFICATE

3 COMMONWEALTH OF PENNSYLVANIA, )  
 ) SS:  
 4 COUNTY OF ALLEGHENY. )

5 I, Jenna Nicole Freund, do hereby certify that  
 6 before me, a Notary Public in and for the Commonwealth  
 7 aforesaid, personally appeared SABRINA HUDSON, who  
 8 then was by me first duly cautioned and sworn to  
 9 testify the truth, the whole truth, and nothing but  
 10 the truth in the taking of her oral deposition in the  
 11 cause aforesaid; that the testimony then given by her  
 12 as above set forth was by me reduced to stenotypy in  
 13 the presence of said witness, and afterwards  
 14 transcribed by means of computer-aided transcription.

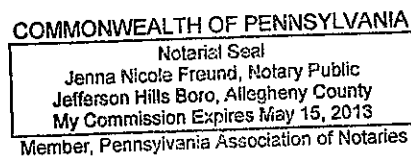
15 I do further certify that this deposition was  
 16 taken at the time and place in the foregoing caption  
 17 specified, and was completed without adjournment.

18 I do further certify that I am not a relative,  
 19 counsel or attorney of either party, or otherwise  
 20 interested in the event of this action.

21 IN WITNESS WHEREOF, I have hereunto set my hand  
 22 and affixed my seal of office at Pittsburgh,  
 23 Pennsylvania, on this 5 day of March,  
 24 2013.

*Jenna Nicole Freund*

\_\_\_\_\_  
 Jenna Nicole Freund  
 Notary Public  
 In and for the Commonwealth of Pennsylvania  
 My commission expires May 15, 2013



# ERRATA SHEET CHANGES IN TESTIMONY

Promark Brands Inc., and H.J. Heinz Company v. GFA Brands, Inc.  
Sabrina Hudson  
February 20, 2013

PAGE	LINE	FROM	TO
9	22	Heinz Ore-Ida	Heinz, Ore-Ida
13	4	portion control	portion controlled
13	24	margarins	margarines
16	7	Yes, I do think.	Yes, I think so.
29	8	to	of
35	20	is	has
49	17	refrigerated consisting	refrigerated entrees consisting
65	15	for	of
75	21	file	filed
79	2	it's	is
79	3	top three of our U.S. food products	top selling products in the entire category, the brand's one of the top three of our U.S. food products
83	6	of	with
83	18	as	has
87	24	I don't believe	<sup>do</sup> I believe
96	13	a company	the company
96	19	is transitional	has transitioned
		<i>Sabrina J. Hudson</i>	3-19-2013

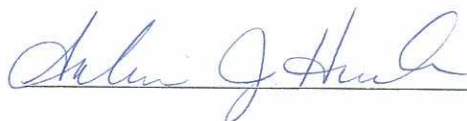
SIGNATURE OF WITNESS

DATE

ERRATA SHEET -Page 2  
CHANGES IN TESTIMONY

Promark Brands Inc., and H.J. Heinz Company v. GFA Brands, Inc.  
Sabrina Hudson  
February 20, 2013

PAGE	LINE	FROM	TO
21	18	register	registration
34	20	opposition	application
35	5	aides (appears twice)	aids
40	10	Ones'	Ones
40	19	withdraw	withdrew
52	7	SMARTON's	SMARTON'S
59	9	Consumer's	Consumers
82	20	Consider fame	consider for fame
84	14	add	a d



SIGNATURE OF WITNESS

3-19-2013

DATE

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

PROMARK BRANDS INC. and  
H. J. HEINZ COMPANY,

Opposers,

vs.

GFA BRANDS, INC.,

Applicant.

**Opposition No. 91194974 (Parent)  
and Opposition No. 91196358**

U.S. Trademark Application 77/864,305  
For the Mark **SMART BALANCE**

U.S. Trademark Application 77/864,268  
For the Mark **SMART BALANCE**

**OPPOSERS' NOTICE OF TESTIMONY DEPOSITION  
PURSUANT TO 37 C.F.R. § 2.123**

PLEASE TAKE NOTICE that, pursuant to Rule 2.123 of the Trademark Rules of Practice and Rules 28 and 30 of the Federal Rules of Civil Procedure, Opposers, ProMark Brands Inc. and H. J. Heinz Company, will take the testimony deposition upon oral examination of Sabrina Hudson, on Wednesday, February 20, 2013, commencing at 9:00 AM at the offices of Jones Day, 500 Grant Street, Suite 4500, Pittsburgh, Pennsylvania 15219, or at such other time and place as the parties may agree or the Trademark Trial and Appeal Board may order. The deposition will be taken before an officer authorized to administer oaths and may be recorded by audio, audiovisual, and/or stenographic means. The deposition will continue from day to day until concluded, Saturdays, Sundays, and legal holidays excepted. The testimony so obtained

Promark v. GFA  
No. 91194974  
Opposer Exhibit  
No. 1  
JME 2-20-13

may be used for all purposes permitted under the Trademark Rules, the Federal Rules of Evidence, and the Federal Rules of Civil Procedure.

Dated this 6th day of February, 2013.

By: /Angela R. Gott/  
Timothy P. Fraelich  
Angela R. Gott  
JONES DAY  
North Point  
901 Lakeside Avenue  
Cleveland, Ohio 44114-1190  
(216) 586-3939 (phone)  
(216) 579-0212 (fax)  
tfraclich@jonesday.com  
agott@jonesday.com

Kevin C. Meacham  
JONES DAY  
500 Grant Street, Suite 4500  
Pittsburgh, Pennsylvania 15219-2514  
(412) 394-7265 (phone)  
(412) 394-7959 (fax)  
kcmeacham@jonesday.com

*Attorneys for Opposers  
ProMark Brands Inc. and H. J. Heinz Company*



**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing was sent by First Class U.S. Mail, postage prepaid, with a courtesy copy via email, on this 6th day of February, 2013, to Counsel for Applicant:

Marta S. Levine  
David R. Cross  
Johanna M. Wilbert  
QUARLES & BRADY LLP  
411 East Wisconsin Avenue, Suite 2350  
Milwaukee, Wisconsin 53202-4426

marta.levine@quarles.com  
david.cross@quarles.com  
johanna.wilbert@quarles.com

/Angela R. Gott/  
Attorney for Opposers

Int. Cls.: 29 and 30

Prior U.S. Cl.: 46

**United States Patent and Trademark Office** Reg. No. 1,911,590  
Registered Aug. 15, 1995

**TRADEMARK  
PRINCIPAL REGISTER**

**SMART ONES**

WEIGHT WATCHERS INTERNATIONAL, INC.  
(VIRGINIA CORPORATION)  
500 NORTH BROADWAY  
JERICO, NY 11753

FOR: FROZEN ENTREES CONSISTING PRI-  
MARILY OF CHICKEN, BEEF, FISH AND/OR  
VEGETABLES, IN CLASS 29 (U.S. CL. 46).

FIRST USE 5-1-1992; IN COMMERCE  
5-1-1992.

FOR: FROZEN ENTREES CONSISTING PRI-  
MARILY OF PASTA AND/OR RICE ALONE  
OR IN COMBINATION WITH OTHER FOODS,  
IN CLASS 30 (U.S. CL. 46).

FIRST USE 5-1-1992; IN COMMERCE  
5-1-1992.

SER. NO. 74-528,148, FILED 5-20-1994.

TINA POMPEY, EXAMINING ATTORNEY

Promark V. GFA  
NO. 91194974  
Opposer Exhibit  
NO. 2  
ONE 2-20-13

HEINZ 000844

**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2011-06-22 11:42:42 ET**

**Serial Number:** 74528148 Assignment Information      Trademark Document Retrieval

**Registration Number:** 1911590

**Mark (words only):** SMART ONES

**Standard Character claim:** No

**Current Status:** The registration has been renewed.

**Date of Status:** 2005-09-22

**Filing Date:** 1994-05-20

**Transformed into a National Application:** No

**Registration Date:** 1995-08-15

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 13

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov**

**Current Location:** 40S -Scanning On Demand

**Date In Location:** 2007-06-22

---

**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

1. H. J. HEINZ COMPANY

**Address:**

H. J. HEINZ COMPANY  
ONE PPG PLACE, SUITE 3100  
PITTSBURGH, PA 15222  
United States

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** Pennsylvania

---

**GOODS AND/OR SERVICES**

---

**International Class:** 029

**Class Status:** Active

frozen entrees consisting primarily of chicken, beef, fish and/or vegetables

**Basis:** 1(a)

**First Use Date:** 1992-05-01

**First Use in Commerce Date:** 1992-05-01

**International Class:** 030

**Class Status:** Active

frozen entrees consisting primarily of pasta and/or rice alone or in combination with other foods

**Basis:** 1(a)

**First Use Date:** 1992-05-01

**First Use in Commerce Date:** 1992-05-01

---

#### ADDITIONAL INFORMATION

---

(NOT AVAILABLE)

---

#### MADRID PROTOCOL INFORMATION

---

(NOT AVAILABLE)

---

#### PROSECUTION HISTORY

---

**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2011-05-11 - Automatic Update Of Assignment Of Ownership

2007-06-22 - Case File In TICSRS

2007-05-02 - TEAS Change Of Correspondence Received

2005-09-22 - First renewal 10 year

2005-09-22 - Section 8 (10-year) accepted/ Section 9 granted

2005-08-11 - Combined Section 8 (10-year)/Section 9 filed

2005-09-20 - Assigned To Paralegal

2005-08-11 - TEAS Section 8 & 9 Received

2005-08-11 - TEAS Change Of Correspondence Received

2004-04-22 - TEAS Change Of Correspondence Received

2002-04-19 - Section 8 (6-year) accepted & Section 15 acknowledged

2002-02-19 - Section 8 (6-year) and Section 15 Filed

1995-08-15 - Registered - Principal Register  
1995-05-23 - Published for opposition  
1995-04-21 - Notice of publication  
1995-01-04 - Approved for Pub - Principal Register (Initial exam)  
1994-11-21 - Communication received from applicant  
1994-11-01 - Non-final action mailed  
1994-10-18 - Assigned To Examiner  
1994-09-26 - Assigned To Examiner

---

**ATTORNEY/CORRESPONDENT INFORMATION**

---

**Attorney of Record**

Bonnie L. Pastorius

**Correspondent**

Sabrina J. Hudson

H. J. Heinz Company

P. O. Box 57

Pittsburgh PA 15230

Phone Number: 412-456-6004

Fax Number: 412-456-1035

---

Int. Cl.: 30

Prior U.S. Cl.: 46

**United States Patent and Trademark Office**

Reg. No. 2,204,080

Registered Nov. 17, 1998

**TRADEMARK  
PRINCIPAL REGISTER**

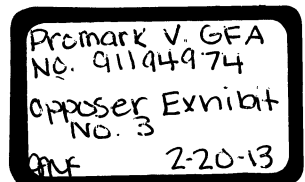
**SMART ONES**

WEIGHT WATCHERS INTERNATIONAL, INC.  
(VIRGINIA CORPORATION)  
175 CROSSWAYS PARK WEST  
WOODBURY, NY 11797

FIRST USE 11-3-1997; IN COMMERCE  
11-3-1997.  
OWNER OF U.S. REG. NOS. 1,871,763 AND  
1,911,590.

FOR: FROZEN DESSERTS CONSISTING OF  
MILK BASED OR MILK SUBSTITUTE BASED  
DESSERTS, CAKES, PIES AND MOUSSES, IN  
CLASS 30 (U.S. CL. 46).

SER. NO. 75-415,119, FILED 1-8-1998.  
ELIZABETH HUGHITT, EXAMINING ATTOR-  
NEY



**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2011-06-22 11:48:56 ET**

**Serial Number:** 75415119 Assignment Information      Trademark Document Retrieval

**Registration Number:** 2204080

**Mark (words only):** SMART ONES

**Standard Character claim:** No

**Current Status:** The registration has been renewed.

**Date of Status:** 2008-10-08

**Filing Date:** 1998-01-08

**Transformed into a National Application:** No

**Registration Date:** 1998-11-17

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 101

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)**

**Current Location:** 830 -Post Registration

**Date In Location:** 2008-10-08

---

**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

1. H. J. HEINZ COMPANY

**Address:**

H. J. HEINZ COMPANY  
ONE PPG PLACE, SUITE 3100  
PITTSBURGH, PA 15222  
United States

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** Pennsylvania

---

**GOODS AND/OR SERVICES**

---

**International Class:** 030

**Class Status:** Active

Frozen desserts consisting of milk based or milk substitute based desserts, cakes, pies and mousses

**Basis:** 1(a)

**First Use Date:** 1997-11-03

**First Use in Commerce Date:** 1997-11-03

---

#### ADDITIONAL INFORMATION

---

**Prior Registration Number(s):**

1871763

1911590

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#### MADRID PROTOCOL INFORMATION

---

(NOT AVAILABLE)

---

#### PROSECUTION HISTORY

---

**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2011-05-11 - Automatic Update Of Assignment Of Ownership

2008-10-08 - First renewal 10 year

2008-10-08 - Section 8 (10-year) accepted/ Section 9 granted

2008-10-03 - Assigned To Paralegal

2008-09-30 - TEAS Section 8 & 9 Received

2007-07-31 - Case File In TIGRS

2007-05-02 - TEAS Change Of Correspondence Received

2007-05-02 - TEAS Change Of Correspondence Received

2005-08-30 - TEAS Change Of Correspondence Received

2004-06-04 - Section 8 (6-year) accepted & Section 15 acknowledged

2004-04-22 - Section 8 (6-year) and Section 15 Filed

2004-04-22 - TEAS Section 8 & 15 Received

2004-04-22 - TEAS Change Of Correspondence Received

1998-11-17 - Registered - Principal Register

1998-08-25 - Published for opposition



1998-07-24 - Notice of publication

1998-06-20 - Approved for Pub - Principal Register (Initial exam)

1998-06-15 - Examiner's amendment mailed

1998-06-02 - Assigned To Examiner

---

**ATTORNEY/CORRESPONDENT INFORMATION**

---

**Correspondent**

SABRINA J. HUDSON

PROMARK BRANDS INC.

2541 NORTH STOKESBERRY

SUITE 100

MERIDIAN, ID 83646

Phone Number: 412-456-6004

Fax Number: 412-456-1035

---

Int. Cl.: 30

Prior U.S. Cl.: 46

**United States Patent and Trademark Office**

Reg. No. 2,916,538

Registered Jan. 4, 2005

**TRADEMARK  
PRINCIPAL REGISTER**

**SMART ONES**

PROMARK BRANDS INC. (IDAHO CORPORATION)

877 WEST MAIN STREET, SUITE 604

BOISE, ID 83702

FOR: PIZZA, IN CLASS 30 (U.S. CL. 46).

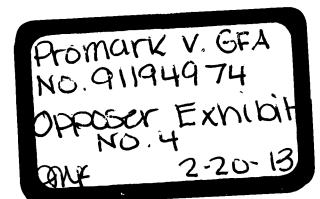
FIRST USE 11-30-1997; IN COMMERCE 11-30-1997.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 1,911,590 AND 2,204,080.

SER. NO. 78-351,994, FILED 1-14-2004.

AMY GEARIN, EXAMINING ATTORNEY



HEINZ 000955

**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2011-06-22 13:50:55 ET**

**Serial Number:** 78351994 Assignment Information      Trademark Document Retrieval

**Registration Number:** 2916538

**Mark**

**SMART ONES**

**(words only):** SMART ONES

**Standard Character claim:** Yes

**Current Status:** A Sections 8 and 15 combined declaration has been accepted and acknowledged.

**Date of Status:** 2010-12-13

**Filing Date:** 2004-01-14

**Transformed into a National Application:** No

**Registration Date:** 2005-01-04

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 115

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov**

**Current Location:** M60 -TMO Law Office 115

**Date In Location:** 2010-12-13

---

**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

1. H. J. HEINZ COMPANY

**Address:**

H. J. HEINZ COMPANY  
ONE PPG PLACE, SUITE 3100

PITTSBURGH, PA 15222

United States

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** Pennsylvania

---

### GOODS AND/OR SERVICES

---

**International Class:** 030

**Class Status:** Active

Pizza

**Basis:** 1(a)

**First Use Date:** 1997-11-30

**First Use in Commerce Date:** 1997-11-30

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### ADDITIONAL INFORMATION

---

**Prior Registration Number(s):**

1911590

2204080

---

### MADRID PROTOCOL INFORMATION

---

(NOT AVAILABLE)

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### PROSECUTION HISTORY

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**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2011-05-11 - Automatic Update Of Assignment Of Ownership

2010-12-13 - Section 8 (6-year) accepted & Section 15 acknowledged

2010-12-13 - Case Assigned To Post Registration Paralegal

2010-11-24 - TEAS Section 8 & 15 Received

2007-03-20 - TEAS Change Of Correspondence Received

2005-01-04 - Registered - Principal Register

2004-10-12 - Published for opposition

2004-09-22 - Notice of publication

2004-08-12 - Law Office Publication Review Completed

2004-08-04 - Assigned To LIE

2004-07-26 - Approved for Pub - Principal Register (Initial exam)

2004-07-24 - Assigned To Examiner

2004-06-25 - PAPER RECEIVED

2004-01-21 - New Application Entered In Tram

---

**ATTORNEY/CORRESPONDENT INFORMATION**

---

**Attorney of Record**

Sabrina J. Hudson

**Correspondent**

Sabrina J. Hudson

H. J. Heinz Company

P. O. Box 57

Pittsburgh PA 15230

Phone Number: 412-456-6004

Fax Number: 412-456-1035

---

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 2,916,539

Registered Jan. 4, 2005

**TRADEMARK  
PRINCIPAL REGISTER**

**SMART ONES**

PROMARK BRANDS INC. (IDAHO CORPORATION)  
877 WEST MAIN STREET, SUITE 604  
BOISE, ID 83702

FOR: PRE-COOKED READY-TO-EAT FROZEN  
BREAD OR WRAP HAVING A MEAT AND/OR  
VEGETABLE FILLING WITH OR WITHOUT  
CHEESE, IN CLASS 30 (U.S. CL. 46).

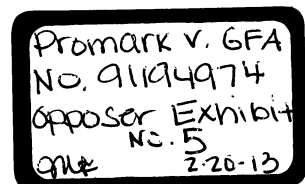
FIRST USE 4-1-2001; IN COMMERCE 4-1-2001.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 1,911,590 AND 2,204,080.

SER. NO. 78-352,011, FILED 1-14-2004.

AMY GEARIN, EXAMINING ATTORNEY



**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2011-06-22 11:53:04 ET**

**Serial Number:** 78352011 Assignment Information      Trademark Document Retrieval

**Registration Number:** 2916539

**Mark**



**(words only):** SMART ONES

**Standard Character claim:** Yes

**Current Status:** A Sections 8 and 15 combined declaration has been accepted and acknowledged.

**Date of Status:** 2010-12-14

**Filing Date:** 2004-01-14

**Transformed into a National Application:** No

**Registration Date:** 2005-01-04

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 115

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov**

**Current Location:** M60 -TMO Law Office 115

**Date In Location:** 2010-12-14

---

**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

1. H. J. HEINZ COMPANY

**Address:**

H. J. HEINZ COMPANY  
ONE PPG PLACE, SUITE 3100

PITTSBURGH, PA 15222

United States

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** Pennsylvania

---

**GOODS AND/OR SERVICES**

---

**International Class:** 030

**Class Status:** Active

Pre-cooked ready-to-eat frozen bread or wrap having a meat and/or vegetable filling with or without cheese

**Basis:** 1(a)

**First Use Date:** 2001-04-01

**First Use in Commerce Date:** 2001-04-01

---

**ADDITIONAL INFORMATION**

---

**Prior Registration Number(s):**

1911590

2204080

---

**MADRID PROTOCOL INFORMATION**

---

(NOT AVAILABLE)

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**PROSECUTION HISTORY**

---

**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2011-05-11 - Automatic Update Of Assignment Of Ownership

2010-12-14 - Section 8 (6-year) accepted & Section 15 acknowledged

2010-12-13 - Case Assigned To Post Registration Paralegal

2010-11-24 - TEAS Section 8 & 15 Received

2007-05-02 - TEAS Change Of Correspondence Received

2005-01-04 - Registered - Principal Register

2004-10-20 - Unresponsive/Duplicate Paper Received

2004-10-20 - PAPER RECEIVED

2004-10-12 - Published for opposition



2004-09-22 - Notice of publication  
2004-08-12 - Law Office Publication Review Completed  
2004-08-04 - Assigned To LIE  
2004-07-26 - Approved for Pub - Principal Register (Initial exam)  
2004-07-24 - Assigned To Examiner  
2004-06-30 - PAPER RECEIVED  
2004-01-21 - New Application Entered In Tram

---

**ATTORNEY/CORRESPONDENT INFORMATION**

---

**Attorney of Record**

Sabrina J. Hudson

**Correspondent**

Sabrina J. Hudson

H. J. Heinz Company

P. O. Box 57

Pittsburgh PA 15230

Phone Number: 412-456-6004

Fax Number: 412-456-1035

---

Int. CL: 30

Prior U.S. Cl: 46

**United States Patent and Trademark Office**

Reg. No. 3,462,182

Registered July 8, 2008

**TRADEMARK  
PRINCIPAL REGISTER**

**SMART ONES**

PROMARK BRANDS INC. (IDAHO CORPORATION)

2541 NORTH STOKESBERRY PLACE, SUITE 100

MERIDIAN, ID 83646

FOR: FROZEN FOODS, NAMELY, BREAKFAST SANDWICHES AND MUFFINS, IN CLASS 30 (U.S. CL. 46).

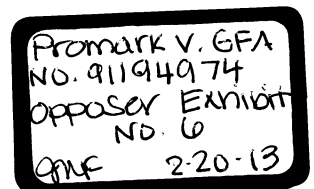
FIRST USE 12-31-1997; IN COMMERCE 12-31-1997.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 1,911,590, 2,916,539 AND OTHERS.

SER. NO. 77-368,176, FILED 1-10-2008.

MARY MUNSON, EXAMINING ATTORNEY



HEINZ 000978

**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2011-06-22 13:52:43 ET**

**Serial Number:** 77368176 Assignment Information      Trademark Document Retrieval

**Registration Number:** 3462182

**Mark**

**SMART ONES**

**(words only):** SMART ONES

**Standard Character claim:** Yes

**Current Status:** Registered. The registration date is used to determine when post-registration maintenance documents are due.

**Date of Status:** 2008-07-08

**Filing Date:** 2008-01-10

**Transformed into a National Application:** No

**Registration Date:** 2008-07-08

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 104

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov**

**Current Location:** 650 -Publication And Issue Section

**Date In Location:** 2008-07-08

---

**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

**1. H. J. HEINZ COMPANY**

**Address:**

**H. J. HEINZ COMPANY**

ONE PPG PLACE, SUITE 3100

PITTSBURGH, PA 15222

United States

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** Pennsylvania

---

**GOODS AND/OR SERVICES**

---

**International Class:** 030

**Class Status:** Active

Frozen foods, namely, breakfast sandwiches and muffins

**Basis:** 1(a)

**First Use Date:** 1997-12-31

**First Use in Commerce Date:** 1997-12-31

---

**ADDITIONAL INFORMATION**

---

**Prior Registration Number(s):**

1911590

2204080

2916539

---

**MADRID PROTOCOL INFORMATION**

---

(NOT AVAILABLE)

---

**PROSECUTION HISTORY**

---

**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2011-05-11 - Automatic Update Of Assignment Of Ownership

2008-07-08 - Registered - Principal Register

2008-04-22 - Published for opposition

2008-04-02 - Notice of publication

2008-03-20 - Law Office Publication Review Completed

2008-03-20 - Assigned To LIE

2008-03-05 - Attorney Revoked And/Or Appointed

2008-03-05 - TEAS Revoke/Appoint Attorney Received

2008-03-03 - Approved for Pub - Principal Register (Initial exam)

2008-03-03 - Examiner's Amendment Entered  
2008-03-03 - Notification Of Examiners Amendment E-Mailed  
2008-03-03 - Examiners amendment e-mailed  
2008-03-03 - Examiners Amendment -Written  
2008-02-26 - Assigned To Examiner  
2008-01-14 - New Application Entered In Tram

---

**ATTORNEY/CORRESPONDENT INFORMATION**

---

**Attorney of Record**

Sabrina J. Hudson

**Correspondent**

Sabrina J. Hudson

H. J. Heinz Company

P. O. Box 57

Pittsburgh PA 15230

Phone Number: 412-456-6004

Fax Number: 412-456-1035

---



United States Patent and Trademark Office

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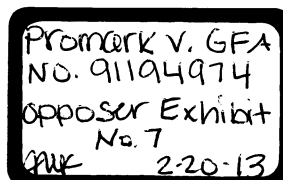
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**Opposition****Number:** 91194974**Filing Date:** 05/20/2010**Status:** Pending**Status Date:** 05/20/2010**Interlocutory Attorney:** CHERYL A BUTLER**Defendant****Name:** GFA Brands, Inc.**Correspondence:** MARTA LEVINE  
QUARLES & BRADY, LLP  
411 EAST WISCONSIN AVE  
MILWAUKEE, WI 53202  
UNITED STATES  
tm-dept@quarles.com**Serial #:** 77864305Application File**Application Status:** Opposition Pending**Mark:** SMART BALANCE**Plaintiff****Name:** Promark Brands Inc.**Correspondence:** TIMOTHY P. FRAELICH  
JONES DAY  
901 LAKESIDE AVENUE  
CLEVELAND, OH 44114  
UNITED STATES  
jwalworth@jonesday.com**Serial #:** 74528148Application File**Registration #:** 1911590**Application Status:** Renewed**Mark:** SMART ONES**Serial #:** 75415119Application File**Registration #:** 2204080**Application Status:** Renewed**Mark:** SMART ONES**Serial #:** 78352011Application File**Registration #:** 2916539**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** SMART ONES**Serial #:** 78351994Application File**Registration #:** 2916538**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** SMART ONES**Serial #:** 77368176Application File**Registration #:** 3462182**Application Status:** Registered**Mark:** SMART ONES**Prosecution History**

#	Date	History Text	Due Date
13	02/14/2011	EXTENSION OF TIME GRANTED	

<http://ttabvue.uspto.gov/ttabvue/v?pno=91194974&pty=OPP>

6/22/2011



HEINZ 000542

12 02/07/2011 STIPULATION FOR AN EXTENSION OF TIME  
11 01/27/2011 MOTION TO CONSOLIDATE GRANTED  
10 01/13/2011 P'S MOTION TO CONSOLIDATE  
9 01/12/2011 D'S APPEARANCE OF COUNSEL/POWER OF ATTORNEY  
8 12/21/2010 SUSPENDED  
7 12/21/2010 STIP TO SUSPEND PEND SETTLEMENT NEGOTNS  
6 08/27/2010 SUSPENDED  
5 08/27/2010 STIP TO SUSPEND PEND SETTLEMENT NEGOTNS  
4 06/29/2010 ANSWER  
3 05/20/2010 PENDING, INSTITUTED  
2 05/20/2010 NOTICE AND TRIAL DATES SENT; ANSWER DUE: 06/29/2010  
1 05/20/2010 FILED AND FEE

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	PROMARK BRANDS INC.		
Entity	Corporation	Citizenship	Idaho
Address	2541 North Stokesberry Place Suite 100 Meridian, ID 83642 UNITED STATES		

Attorney information	Timothy P. Fraelich JONES DAY 901 Lakeside Avenue Cleveland, OH 44114 UNITED STATES tfraclich@jonesday.com, jwalworth@jonesday.com, pcynghier@jonesday.com Phone:216-586-1247
----------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**Applicant Information**

Application No	77864305	Publication date	04/20/2010
Opposition Filing Date	05/20/2010	Opposition Period Ends	05/20/2010
Applicant	GFA Brands, Inc. Suite 260 115 W. Century Rd. Paramus, NJ 07652 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 029. All goods and services in the class are opposed, namely: Frozen appetizers primarily containing poultry, meat, seafood or vegetables; frozen entrees primarily containing poultry, meat, seafood or vegetables
Class 030. All goods and services in the class are opposed, namely: frozen entrees consisting primarily of pasta or rice

**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)


**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	1911590	Application Date	05/20/1994
Registration Date	08/15/1995	Foreign Priority	NONE





		Date	
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1992/05/01 First Use In Commerce: 1992/05/01 frozen entrees consisting primarily of chicken, beef, fish and/or vegetables Class 030. First use: First Use: 1992/05/01 First Use In Commerce: 1992/05/01 frozen entrees consisting primarily of pasta and/or rice alone or in combination with other foods		

U.S. Registration No.	2204080	Application Date	01/08/1998
Registration Date	11/17/1998	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/11/03 First Use In Commerce: 1997/11/03 Frozen desserts consisting of milk based or milk substitute based desserts, cakes, pies and mousses		

U.S. Registration No.	2916539	Application Date	01/14/2004
Registration Date	01/04/2005	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2001/04/01 First Use In Commerce: 2001/04/01 Pre-cooked ready-to-eat frozen bread or wrap having a meat and/or vegetable filling with or without cheese		

U.S. Registration No.	2916538	Application Date	01/14/2004
Registration Date	01/04/2005	Foreign Priority Date	NONE
Word Mark	SMART ONES		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 1997/11/30 First Use In Commerce: 1997/11/30 Pizza

U.S. Registration No.	3462182	Application Date	01/10/2008
Registration Date	07/08/2008	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/12/31 First Use In Commerce: 1997/12/31 Frozen foods, namely, breakfast sandwiches and muffins		

Attachments	78352011#TMSN.jpeg ( 1 page )( bytes ) 78351994#TMSN.jpeg ( 1 page )( bytes ) 77368176#TMSN.jpeg ( 1 page )( bytes ) DOC156.pdf ( 8 pages )(229509 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Timothy P. Fraelich/
Name	Timothy P. Fraelich

---

Date	05/20/2010
------	------------

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of

U.S. Trademark Application 77/864,305  
For the Mark **SMART BALANCE**  
Published in the Official Gazette on April 20, 2010

PROMARK BRANDS INC.,

Opposer,

Opposition No. \_\_\_\_\_

v.

GFA BRANDS, INC.,

Applicant.

Commissioner of Trademarks  
Box TTAB  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

**NOTICE OF OPPOSITION**

1. Opposer, ProMark Brands Inc. ("Opposer"), a corporation duly organized and existing under the laws of Idaho and having a place of business at 2541 North Stokesberry Place, Suite 100, Meridian, ID 83646, believes that it will be damaged by the registration of the mark SMART BALANCE ("Applicant's Mark") shown in trademark application Serial No. 77/864,305 (the "Application") and hereby opposes same pursuant to 15 U.S.C. §§ 1052 and 1063.

2. To the best of Opposer's knowledge, the name and address of the current owner of the Application is GFA Brands, Inc. ("Applicant"), 115 W. Century Rd., Suite 260, Paramus, NJ 07652, United States.

As grounds for opposition, it is alleged that:

**The Application**

3. Applicant filed the Application on an intent-to-use basis to register the mark SMART BALANCE to identify:

- a. Frozen appetizers primarily containing poultry, meat, seafood or vegetables; frozen entrees primarily containing poultry, meat, seafood or vegetables in International Class 29; and
- b. Frozen entrees consisting primarily of pasta or rice in International Class 30.

4. The Application was published in the Official Gazette on April 20, 2010.

5. Applicant has not filed an amendment to allege use as of May 20, 2010.

**Opposer's Registered Marks**

6. Opposer is the owner of the following registrations in the United States Patent and Trademark Office for SMART ONES ("Opposer's Marks"), which registrations have not been cancelled, are valid and in full force and effect:

<b>Trademark</b>	<b>Registration/ Serial No.</b>	<b>Registration/ Filing Date</b>	<b>International Class/Goods</b>
SMART ONES	1,911,590	August 15, 1995	29 – Frozen entrees consisting primarily of chicken, beef, fish and/or vegetables.
SMART ONES	2,204,080	November 17, 1998	30 – Frozen desserts consisting of milk based or milk substitute based desserts, cakes, pies and mousses.
SMART ONES	2,916,539	January 4, 2005	30 – Pre-cooked ready-to-eat frozen bread or wrap having a meat and/or vegetable filling with or without cheese.
SMART ONES	2,916,538	January 4, 2005	30 – Pizza.

<b>Trademark</b>	<b>Registration/ Serial No.</b>	<b>Registration/ Filing Date</b>	<b>International Class/Goods</b>
SMART ONES	3,462,182	July 8, 2008	30 – Frozen foods, namely, breakfast sandwiches and muffins.

Registration Nos. 1,911,590 and 2,204,080 have become incontestable as a matter of law under 15 U.S.C. § 1065.

7. Opposer's ownership in Registration Nos. 1,911,590 and 2,204,080 results from the following chain of title:

<b>Assignment</b>	by Weight Watchers International, Inc. to H.J. Heinz Company (recorded at Reel 1971/Frame 0642);
<b>Assignment</b>	by H.J. Heinz Company to ProMark International, Inc. (recorded at Reel 2327/Frame 0405);
<b>Merger</b>	of ProMark International, Inc. with H.J. Heinz Company (recorded at Reel 2633/Frame 0413);
<b>Assignment</b>	by H.J. Heinz Company to ProMark Brands Inc. (recorded at Reel 2631/Frame 0678).

#### **Opposer's Use Of Its Famous Marks**

8. Opposer, through its predecessors and licensee, since at least as early as May 1, 1992, has been, and is now, using the mark SMART ONES throughout the United States in connection with the goods described above.

9. Opposer's use of Opposer's Marks, as described above, has been valid and continuous since the date of first use.

10. Opposer's continuous, exclusive and commercially-successful use of the mark SMART ONES is symbolic of extensive good will and consumer recognition built up by Opposer through substantial amounts of time, money and effort in manufacturing, advertising and promotion.

11. Upon information and belief, Applicant's SMART ONES mark is widely and highly recognized by the general, consuming public of the United States as a designation of source of Opposer's goods.

12. Upon information and belief, the mark SMART ONES has come to serve as a unique and famous identifier of Opposer's goods.

**Dilution And Confusion Are Likely**

13. Opposer's use of the mark SMART ONES predates any alleged use by Applicant for Applicant's Mark.

14. Opposer's use of the mark SMART ONES predates the filing date of the Application.

15. Opposer's Marks were well established and famous long before the filing date of the Application and at the time that Applicant filed the Application.

16. Upon information and belief, Applicant's Mark SMART BALANCE, to be used in connection with the goods covered by Application No. 77/864,305, is confusingly similar to Opposer's Marks as used and registered by Opposer.

17. Upon information and belief, the products to which Applicant's Mark SMART BALANCE will be used are related to, or identical to, various products on and in connection with which Opposer and its predecessors-in-interest have used, and are using, the mark SMART ONES.

18. Upon information and belief, the goods to which Applicant's Mark SMART BALANCE will be applied, and the products on and in connection with which Opposer uses its mark SMART ONES, are products that are offered for sale and sold in identical channels of trade.

19. Upon information and belief, the goods to which Applicant's Mark SMART BALANCE will be applied, and the products on and in connection with which Opposer uses its mark SMART ONES, are products that are offered for sale and sold to the same class of purchasers.

20. Upon information and belief, both Opposer's goods and Applicant's goods are relatively low-priced and may be purchased on impulse by consumers.

**Applicant Has Essentially Admitted That Dilution And Confusion Are Likely**

21. In numerous proceedings before the Trademark Trial and Appeal Board, Applicant has challenged applications arguing that its registrations and applications for "smart" related marks that predate other "smart" related marks should bar registration.

22. Specifically, Applicant has argued that permitting other "smart" marks to register would interfere with its use of its marks and would seriously damage Applicant.

23. Opposer's use of the mark SMART ONES predates any alleged use by Applicant for Applicant's Mark. Further, Opposer's SMART ONES mark became famous before Applicant filed the Application. Thus, based upon Applicant's own admissions, as set forth in multiple pleadings before the Trademark Trial and Appeal Board, in this instance, permitting Applicant's Mark to register would interfere with Opposer's use of Opposer's Marks and would seriously damage Opposer.

**COUNT I**  
**LIKELIHOOD OF CONFUSION**

24. ProMark incorporates each and every allegation of Paragraphs 1-23 of this Notice as though fully set forth herein.

25. In view of the fame of Opposer's Marks, the similarity of the respective marks, similarity of the channels of trade, related nature of the goods and the relatively low-priced



nature of the goods, the mark shown in the Application so resembles Opposer's Marks so as to be likely to cause confusion, or to cause mistake, or to deceive as to source by suggesting that Applicant's goods are associated with or approved, endorsed, affiliated, authorized or sponsored by Opposer.

26. In view of the fame of Opposer's Marks, the similarity of the respective marks, similarity of the channels of trade, related nature of the goods and the relatively low-priced nature of the goods, the mark shown in the Application so resembles Opposer's Marks so as to be likely to cause confusion, or to cause mistake, or to deceive as to source by suggesting that Opposer's goods are associated with or approved, endorsed, affiliated, authorized or sponsored by Applicant.

## **COUNT II** **TRADEMARK DILUTION**

27. ProMark incorporates each and every allegation of Paragraphs 1-26 of this Notice as though fully set forth herein.

28. SMART ONES has become famous in accordance with the standard set forth in 15 U.S.C. § 1125(c).

29. Applicant filed the Application for SMART BALANCE after Opposer's SMART ONES mark became famous.

30. Applicant's Mark is likely to cause the dilution of the distinctiveness of the Opposer's famous SMART ONES mark.

WHEREFORE, Opposer prays that Application Serial No. 77/864,305 be rejected in its entirety on the basis of: (1) likelihood of confusion and (2) likelihood of dilution; and that no

registration be issued thereon to Applicant and that this Opposition be sustained in favor of Opposer.

Dated this 20th day of May, 2010.

Respectfully submitted,

By: /James W. Walworth, Jr./  
Timothy P. Fraelich  
James W. Walworth, Jr.  
JONES DAY  
901 Lakeside Avenue  
Cleveland, Ohio 44114-1190  
(216) 586-3939 (phone)  
(216) 579-0212 (fax)  
tfraelich@jonesday.com  
jwalworth@jonesday.com

Attorneys for Opposer  
ProMark Brands Inc.

**CERTIFICATE OF SERVICE**

A copy of the foregoing was served on this 20th day of May, 2010, via first-class mail  
upon the Attorney of Record for Applicant:

Patrick M. Bergin  
DAVIS & KUELTHAU, S.C.  
111 E Kilbourn Ave  
STE 1400  
Milwaukee, WI 53202-6613

/James W. Walworth, Jr./  
Attorney for Opposer



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**Opposition****Number:** 91196358**Filing Date:** 09/02/2010**Status:** Pending**Status Date:** 09/02/2010**Interlocutory Attorney:** CHERYL A BUTLER**Defendant****Name:** GFA Brands, Inc.**Correspondence:** MARTA LEVINE  
QUARLES & BRADY LLP  
411 EAST WISCONSIN AVE  
MILWAUKEE, WI 53202  
UNITED STATES  
tm-dept@quarles.com**Serial #:** 77864268Application File**Application Status:** Opposition Pending**Mark:** SMART BALANCE**Plaintiff****Name:** ProMark Brands Inc.**Correspondence:** TIMOTHY P FRAELICH  
JONES DAY  
901 LAKESIDE AVENUE  
CLEVELAND, OH 44114  
UNITED STATES  
jwalworth@jonesday.com**Serial #:** 74528148Application File**Registration #:** 1911590**Application Status:** Renewed**Mark:** SMART ONES**Serial #:** 75415119Application File**Registration #:** 2204080**Application Status:** Renewed**Mark:** SMART ONES**Serial #:** 78352011Application File**Registration #:** 2916539**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** SMART ONES**Serial #:** 78351994Application File**Registration #:** 2916538**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** SMART ONES**Serial #:** 77368176Application File**Registration #:** 3462182**Application Status:** Registered**Mark:** SMART ONES**Prosecution History**

#	Date	History Text	Due Date
9	01/27/2011	<u>PAPER RECEIVED AT TTAB</u>	

8 01/13/2011 P'S MOTION TO CONSOLIDATE  
7 01/12/2011 D'S APPEARANCE OF COUNSEL/POWER OF ATTORNEY  
6 12/21/2010 SUSPENDED  
5 12/21/2010 STIP TO SUSPEND PEND SETTLEMENT NEGOTNS  
4 10/12/2010 ANSWER  
3 09/02/2010 PENDING, INSTITUTED  
2 09/02/2010 NOTICE AND TRIAL DATES SENT; ANSWER DUE: 10/12/2010  
1 09/02/2010 FILED AND FEE

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ESTTA Tracking number: **ESTTA366414**Filing date: **09/02/2010**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	ProMark Brands Inc.		
Entity	Corporation	Citizenship	Idaho
Address	2541 North Stokesberry Place Suite 100 Meridian, ID 83642 UNITED STATES		

Attorney information	Timothy P. Fraelich JONES DAY 901 Lakeside Avenue Cleveland, OH 44114 UNITED STATES tfraclich@jonesday.com, jwalworth@jonesday.com, pcyn gier@jonesday.com Phone:216-586-1247
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**Applicant Information**

Application No	77864268	Publication date	08/10/2010
Opposition Filing Date	09/02/2010	Opposition Period Ends	09/09/2010
Applicant	GFA Brands, Inc. 115 W. Century Rd. Suite 260 Paramus, NJ 07652 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 029. All goods and services in the class are opposed, namely: soy chips and yucca chips; snack mixes consisting primarily of processed fruits, processed nuts, raisins and/or seeds; nut and seed-based snack bars
Class 030. All goods and services in the class are opposed, namely: cake mix, frosting, cakes, frozen cakes, cookies, coffee, tea, hot chocolate, bread, rolls, crackers, pretzels, corn chips, snack mixes consisting primarily of crackers, pretzels, nuts and/or popped popcorn, spices, granola-based snack bars; pita chips

**Grounds for Opposition**


Priority and likelihood of confusion	Trademark Act section 2(d)
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**Marks Cited by Opposer as Basis for Opposition**


U.S. Registration No.	1911590	Application Date	05/20/1994
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Registration Date	08/15/1995	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1992/05/01 First Use In Commerce: 1992/05/01 frozen entrees consisting primarily of chicken, beef, fish and/or vegetables Class 030. First use: First Use: 1992/05/01 First Use In Commerce: 1992/05/01 frozen entrees consisting primarily of pasta and/or rice alone or in combination with other foods		

U.S. Registration No.	2204080	Application Date	01/08/1998
Registration Date	11/17/1998	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/11/03 First Use In Commerce: 1997/11/03 Frozen desserts consisting of milk based or milk substitute based desserts, cakes, pies and mousses		

U.S. Registration No.	2916539	Application Date	01/14/2004
Registration Date	01/04/2005	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2001/04/01 First Use In Commerce: 2001/04/01 Pre-cooked ready-to-eat frozen bread or wrap having a meat and/or vegetable filling with or without cheese		

U.S. Registration No.	2916538	Application Date	01/14/2004
Registration Date	01/04/2005	Foreign Priority Date	NONE
Word Mark	SMART ONES		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 1997/11/30 First Use In Commerce: 1997/11/30 Pizza

U.S. Registration No.	3462182	Application Date	01/10/2008
Registration Date	07/08/2008	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/12/31 First Use In Commerce: 1997/12/31 Frozen foods, namely, breakfast sandwiches and muffins		

Attachments	78352011#TMSN.jpeg ( 1 page )( bytes ) 78351994#TMSN.jpeg ( 1 page )( bytes ) 77368176#TMSN.jpeg ( 1 page )( bytes ) DOC087.pdf ( 8 pages )(232934 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Timothy P. Fraelich/
Name	Timothy P. Fraelich



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Date	09/02/2010
------	------------

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of

U.S. Trademark Application 77/864,268  
For the Mark **SMART BALANCE**  
Published in the Official Gazette on August 10, 2010

PROMARK BRANDS INC.,

Opposer,

Opposition No. \_\_\_\_\_

v.

GFA BRANDS, INC.,

Applicant.

Commissioner of Trademarks  
Box TTAB  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

**NOTICE OF OPPOSITION**

1. Opposer, ProMark Brands Inc. ("Opposer"), a corporation duly organized and existing under the laws of Idaho and having a place of business at 2541 North Stokesberry Place, Suite 100, Meridian, ID 83646, believes that it will be damaged by the registration of the mark **SMART BALANCE** ("Applicant's Mark") shown in trademark application Serial No. 77/864,268 (the "Application") and hereby opposes same pursuant to 15 U.S.C. §§ 1052 and 1063.

2. To the best of Opposer's knowledge, the name and address of the current owner of the Application is GFA Brands, Inc. ("Applicant"), 115 W. Century Rd., Suite 260, Paramus, NJ 07652, United States.

As grounds for opposition, it is alleged that:

#### **The Application**

3. Applicant filed the Application on an intent-to-use basis to register the mark SMART BALANCE to identify:

- a. soy chips and yucca chips; snack mixes consisting primarily of processed fruits, processed nuts, raisins and/or seeds; nut and seed-based snack bars in International Class 29; and
- b. cake mix, frosting, cakes, frozen cakes, cookies, coffee, tea, hot chocolate, bread, rolls, crackers, pretzels, corn chips, snack mixes consisting primarily of crackers, pretzels, nuts and/or popped popcorn, spices, granola-based snack bars; pita chips in International Class 30.

4. The Application was published in the Official Gazette on August 10, 2010.

5. Applicant has not filed an amendment to allege use as of September 2, 2010.

#### **Opposer's Registered Marks**

6. Opposer is the owner of the following registrations in the United States Patent and Trademark Office for SMART ONES ("Opposer's Marks"), which registrations have not been cancelled, are valid and in full force and effect:

<b>Trademark</b>	<b>Registration/ Serial No.</b>	<b>Registration/ Filing Date</b>	<b>International Class/Goods</b>
SMART ONES	1,911,590	August 15, 1995	29 – Frozen entrees consisting primarily of chicken, beef, fish and/or vegetables.
SMART ONES	2,204,080	November 17, 1998	30 – Frozen desserts consisting of milk based or milk substitute based desserts, cakes, pies and mousses.

<b>Trademark</b>	<b>Registration/ Serial No.</b>	<b>Registration/ Filing Date</b>	<b>International Class/Goods</b>
SMART ONES	2,916,539	January 4, 2005	30 – Pre-cooked ready-to-eat frozen bread or wrap having a meat and/or vegetable filling with or without cheese.
SMART ONES	2,916,538	January 4, 2005	30 – Pizza.
SMART ONES	3,462,182	July 8, 2008	30 – Frozen foods, namely, breakfast sandwiches and muffins.

Registration Nos. 1,911,590 and 2,204,080 have become incontestable as a matter of law under 15 U.S.C. § 1065.

7. Opposer's ownership in Registration Nos. 1,911,590 and 2,204,080 results from the following chain of title:

<b>Assignment</b>	by Weight Watchers International, Inc. to H.J. Heinz Company (recorded at Reel 1971/Frame 0642);
<b>Assignment</b>	by H.J. Heinz Company to ProMark International, Inc. (recorded at Reel 2327/Frame 0405);
<b>Merger</b>	of ProMark International, Inc. with H.J. Heinz Company (recorded at Reel 2633/Frame 0413);
<b>Assignment</b>	by H.J. Heinz Company to ProMark Brands Inc. (recorded at Reel 2631/Frame 0678).

#### **Opposer's Use Of Its Famous Marks**

8. Opposer, through its predecessors and licensee, since at least as early as May 1, 1992, has been, and is now, using the mark SMART ONES throughout the United States in connection with the goods described above.

9. Opposer's use of Opposer's Marks, as described above, has been valid and continuous since the date of first use.

10. Opposer's continuous, exclusive and commercially-successful use of the mark SMART ONES is symbolic of extensive good will and consumer recognition built up by

Opposer through substantial amounts of time, money and effort in manufacturing, advertising and promotion.

11. Upon information and belief, Applicant's SMART ONES mark is widely and highly recognized by the general, consuming public of the United States as a designation of source of Opposer's goods.

12. Upon information and belief, the mark SMART ONES has come to serve as a unique and famous identifier of Opposer's goods.

**Dilution And Confusion Are Likely**

13. Opposer's use of the mark SMART ONES predates any alleged use by Applicant for Applicant's Mark.

14. Opposer's use of the mark SMART ONES predates the filing date of the Application.

15. Opposer's Marks were well established and famous long before the filing date of the Application and at the time that Applicant filed the Application.

16. Upon information and belief, Applicant's Mark SMART BALANCE, to be used in connection with the goods covered by Application No. 77/864,268, is confusingly similar to Opposer's Marks as used and registered by Opposer.

17. Upon information and belief, the products to which Applicant's Mark SMART BALANCE will be used are related to, or identical to, various products on and in connection with which Opposer and its predecessors-in-interest have used, and are using, the mark SMART ONES.

18. Upon information and belief, the goods to which Applicant's Mark SMART BALANCE will be applied, and the products on and in connection with which Opposer uses its

mark SMART ONES, are products that are offered for sale and sold in identical channels of trade.

19. Upon information and belief, the goods to which Applicant's Mark SMART BALANCE will be applied, and the products on and in connection with which Opposer uses its mark SMART ONES, are products that are offered for sale and sold to the same class of purchasers.

20. Upon information and belief, both Opposer's goods and Applicant's goods are relatively low-priced and may be purchased on impulse by consumers.

**Applicant Has Essentially Admitted That Dilution And Confusion Are Likely**

21. In numerous proceedings before the Trademark Trial and Appeal Board, Applicant has challenged applications arguing that its registrations and applications for "smart" related marks that predate other "smart" related marks should bar registration.

22. Specifically, Applicant has argued that permitting other "smart" marks to register would interfere with its use of its marks and would seriously damage Applicant.

23. Opposer's use of the mark SMART ONES predates any alleged use by Applicant for Applicant's Mark. Further, Opposer's SMART ONES mark became famous before Applicant filed the Application. Thus, based upon Applicant's own admissions, as set forth in multiple pleadings before the Trademark Trial and Appeal Board, in this instance, permitting Applicant's Mark to register would interfere with Opposer's use of Opposer's Marks and would seriously damage Opposer.

**COUNT I**  
**LIKELIHOOD OF CONFUSION**

24. ProMark incorporates each and every allegation of Paragraphs 1-23 of this Notice as though fully set forth herein.

25. In view of the fame of Opposer's Marks, the similarity of the respective marks, similarity of the channels of trade, related nature of the goods and the relatively low-priced nature of the goods, the mark shown in the Application so resembles Opposer's Marks so as to be likely to cause confusion, or to cause mistake, or to deceive as to source by suggesting that Applicant's goods are associated with or approved, endorsed, affiliated, authorized or sponsored by Opposer.

26. In view of the fame of Opposer's Marks, the similarity of the respective marks, similarity of the channels of trade, related nature of the goods and the relatively low-priced nature of the goods, the mark shown in the Application so resembles Opposer's Marks so as to be likely to cause confusion, or to cause mistake, or to deceive as to source by suggesting that Opposer's goods are associated with or approved, endorsed, affiliated, authorized or sponsored by Applicant.

## **COUNT II** **TRADEMARK DILUTION**

27. ProMark incorporates each and every allegation of Paragraphs 1-26 of this Notice as though fully set forth herein.

28. SMART ONES has become famous in accordance with the standard set forth in 15 U.S.C. § 1125(c).

29. Applicant filed the Application for SMART BALANCE after Opposer's SMART ONES mark became famous.

30. Applicant's Mark is likely to cause the dilution of the distinctiveness of the Opposer's famous SMART ONES mark.

WHEREFORE, Opposer prays that Application Serial No. 77/864,305 be rejected in its entirety on the basis of: (1) likelihood of confusion and (2) likelihood of dilution; and that no registration be issued thereon to Applicant and that this Opposition be sustained in favor of Opposer.

Dated this 2nd day of September, 2010.

Respectfully submitted,

By: /James W. Walworth, Jr./  
Timothy P. Fraelich  
James W. Walworth, Jr.  
JONES DAY  
901 Lakeside Avenue  
Cleveland, Ohio 44114-1190  
(216) 586-3939 (phone)  
(216) 579-0212 (fax)  
tfraclich@jonesday.com  
jwalworth@jonesday.com

Attorneys for Opposer  
ProMark Brands Inc.



**CERTIFICATE OF SERVICE**

A copy of the foregoing was served on this 2nd day of September, 2010, via first-class  
mail upon the Attorney of Record for Applicant:

Patrick M. Bergin  
DAVIS & KUELTHAU, S.C.  
111 E Kilbourn Ave  
STE 1400  
Milwaukee, WI 53202-6613

/James W. Walworth, Jr./  
Attorney for Opposer



## United States Patent and Trademark Office

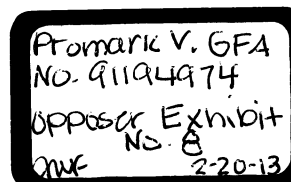
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**Opposition****Number:** 91199995**Filing Date:** 05/26/2011**Status:** Pending**Status Date:** 05/26/2011**Interlocutory Attorney:** GEORGE POLOGEORGIS**Defendant****Name:** Sterner, Mark**Correspondence:** STERNER, MARK  
5425 WILSON ST  
RIVERSIDE, CA 92509-2434  
mark@inlandempirefoods.com**Serial #:** 85113289[Application File](#)**Application Status:** Opposition Pending**Mark:** SMART CHOICE**Plaintiff****Name:** ProMark Brands Inc.**Correspondence:** Timothy P. Fraelich  
JONES DAY  
901 Lakeside Avenue  
Cleveland, OH 44114  
UNITED STATES  
tfraclich@jonesday.com**Serial #:** 74528148[Application File](#)**Registration #:** 1911590**Application Status:** Renewed**Mark:** SMART ONES**Serial #:** 75415119[Application File](#)**Registration #:** 2204080**Application Status:** Renewed**Mark:** SMART ONES**Serial #:** 78352011[Application File](#)**Registration #:** 2916539**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** SMART ONES**Serial #:** 78351994[Application File](#)**Registration #:** 2916538**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** SMART ONES**Serial #:** 77368176[Application File](#)**Registration #:** 3462182**Application Status:** Registered**Mark:** SMART ONES**Prosecution History**

#	Date	History Text	Due Date
5	06/21/2011	<u>EXTENSION OF TIME GRANTED</u>	
4	06/20/2011	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
3	05/26/2011	PENDING, INSTITUTED	



2 05/26/2011 NOTICE AND TRIAL DATES SENT; ANSWER DUE: 07/05/2011  
1 05/26/2011 FILED AND FEE

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ESTTA Tracking number: **ESTTA411294**

Filing date: **05/26/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	ProMark Brands Inc.
Granted to Date of previous extension	06/01/2011
Address	2541 North Stokesberry Place, Suite 100 Meridian, ID 83646 UNITED STATES
Attorney information	Timothy P. Fraelich JONES DAY 901 Lakeside Avenue Cleveland, OH 44114 UNITED STATES tfraclich@jonesday.com, rholte@jonesday.com, pcynghier@jonesday.com Phone:216-586-3939

**Applicant Information**

Application No	85113289	Publication date	02/01/2011
Opposition Filing Date	05/26/2011	Opposition Period Ends	06/01/2011
Applicant	Stern, Mark 5425 Wilson Street Riverside, CA 92509 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 029. First Use: 2000/09/05 First Use In Commerce: 2001/11/28 All goods and services in the class are opposed, namely: Soups
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**Grounds for Opposition**


Priority and likelihood of confusion	Trademark Act section 2(d)
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**Marks Cited by Opposer as Basis for Opposition**


U.S. Registration No.	1911590	Application Date	05/20/1994
Registration Date	08/15/1995	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of	NONE		


Mark	
Goods/Services	Class 029. First use: First Use: 1992/05/01 First Use In Commerce: 1992/05/01 frozen entrees consisting primarily of chicken, beef, fish and/or vegetables Class 030. First use: First Use: 1992/05/01 First Use In Commerce: 1992/05/01 frozen entrees consisting primarily of pasta and/or rice alone or in combination with other foods

U.S. Registration No.	2204080	Application Date	01/08/1998
Registration Date	11/17/1998	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/11/03 First Use In Commerce: 1997/11/03 Frozen desserts consisting of milk based or milk substitute based desserts, cakes, pies and mousses		

U.S. Registration No.	2916539	Application Date	01/14/2004
Registration Date	01/04/2005	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2001/04/01 First Use In Commerce: 2001/04/01 Pre-cooked ready-to-eat frozen bread or wrap having a meat and/or vegetable filling with or without cheese		

U.S. Registration No.	2916538	Application Date	01/14/2004
Registration Date	01/04/2005	Foreign Priority Date	NONE
Word Mark	SMART ONES		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 1997/11/30 First Use In Commerce: 1997/11/30 Pizza

U.S. Registration No.	3462182	Application Date	01/10/2008
Registration Date	07/08/2008	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/12/31 First Use In Commerce: 1997/12/31 Frozen foods, namely, breakfast sandwiches and muffins		

Attachments	78352011#TMSN.jpeg ( 1 page )( bytes ) 78351994#TMSN.jpeg ( 1 page )( bytes ) 77368176#TMSN.jpeg ( 1 page )( bytes ) smart choice.pdf ( 7 pages )(218962 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Timothy P. Fraelich/
Name	Timothy P. Fraelich

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Date	05/26/2011
------	------------

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of

U.S. Trademark Application 85/113,289  
For the Mark SMART CHOICE  
Published in the Official Gazette on February 1, 2011

H. J. HEINZ COMPANY,

Opposer,

v.

STERNER, MARK

Applicant.

Opposition No. \_\_\_\_\_

Commissioner of Trademarks  
Box TTAB  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

**NOTICE OF OPPOSITION**

1. Opposer, H. J. Heinz Company ("Opposer"), a corporation duly organized and existing under the laws of Pennsylvania and having a place of business at One PPG Place, Suite 3100, Pittsburgh, PA 15222, believes that it will be damaged by the registration of the mark SMART CHOICE ("Applicant's Mark") shown in trademark application Serial No. 85/113,289 (the "Application") and hereby opposes same pursuant to 15 U.S.C. §§ 1052 and 1063.

2. To the best of Opposer's knowledge, the name and address of the current owner of the Application is Mark Sterner ("Applicant"), 5425 Wilson Street, Riverside, California 92509, United States.

As grounds for opposition, it is alleged that:



### **The Application**

3. Applicant filed the actual use Application to register the mark SMART CHOICE to identify, among other goods:

**Soups in International Class 29.**

4. The Application claimed a first use date at least as early as 09/05/2000, and a first use in commerce date at least as early as 11/28/2001.

5. The Application was published in the Official Gazette on February 1, 2011.

### **Opposer's Registered Marks**

6. Opposer is the owner of the following registrations in the United States Patent and Trademark Office for SMART ONES ("Opposer's Marks"), which registrations have not been cancelled, are valid and in full force and effect:

<b>Trademark</b>	<b>Registration/ Serial No.</b>	<b>Registration/ Filing Date</b>	<b>International Class/Goods</b>
SMART ONES	1,911,590	August 15, 1995	29 – Frozen entrees consisting primarily of chicken, beef, fish and/or vegetables; 30 – Frozen entrees consisting primarily of pasta and/or rice alone on in combination with other foods.
SMART ONES	2,204,080	November 17, 1998	30 – Frozen desserts consisting of milk based or milk substitute based desserts, cakes, pies and mousses.
SMART ONES	2,916,539	January 4, 2005	30 – Pre-cooked ready-to-eat frozen bread or wrap having a meat and/or vegetable filling with or without cheese.
SMART ONES	2,916,538	January 4, 2005	30 – Pizza.
SMART ONES	3,462,182	July 8, 2008	30 – Frozen foods, namely, breakfast sandwiches and muffins.

The following Registration Nos. have become incontestable as a matter of law under 15 U.S.C.

§ 1065: 1,911,590; 2,204,080; 2,916,539; and 2,916,538.

7. Opposer's ownership in Registration Nos. 1,911,590 and 2,204,080 results from the following chain of title:

<b>Assignment</b>	by Weight Watchers International, Inc. to H.J. Heinz Company (recorded at Reel 1971/Frame 0642);
<b>Assignment</b>	by H.J. Heinz Company to ProMark International, Inc. (recorded at Reel 2327/Frame 0405);
<b>Merger</b>	of ProMark International, Inc. with H.J. Heinz Company (recorded at Reel 2633/Frame 0413);
<b>Assignment</b>	by H.J. Heinz Company to ProMark Brands Inc. (recorded at Reel 2631/Frame 0678);
<b>Assignment</b>	by ProMark Brands Inc. to H. J. Heinz Company (recorded at Reel 4534/Frame 0456);

and ownership in Registration Nos. 2,916,539, 2,916,538 and 3,462,182 results from the following chain of title:

<b>Assignment</b>	by ProMark Brands Inc. to H. J. Heinz Company (recorded at Reel 4534/Frame 0456).
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#### **Opposer's Use Of Its Famous Marks**

8. Opposer, through its predecessors and licensee, since at least as early as May 1, 1992, has been, and is now, using the mark SMART ONES throughout the United States in connection with the goods described above.

9. Opposer's use of Opposer's Marks, as described above, has been valid and continuous since the date of first use.

10. Opposer's continuous, exclusive and commercially-successful use of the mark SMART ONES is symbolic of extensive good will and consumer recognition built up by

Opposer through substantial amounts of time, money and effort in manufacturing, advertising and promotion.

11. Upon information and belief, Opposer's SMART ONES mark is widely and highly recognized by the general, consuming public of the United States as a designation of source of Opposer's goods.

12. Upon information and belief, the mark SMART ONES has come to serve as a unique and famous identifier of Opposer's goods.

**Dilution And Confusion Are Likely**

13. Opposer's use of the mark SMART ONES predates any alleged use by Applicant for Applicant's Mark.

14. Opposer's use of the mark SMART ONES predates the filing date of the Application.

15. Opposer's Marks were well established and famous long before the filing date of the Application and at the time that Applicant filed the Application.

16. Upon information and belief, Applicant's Mark SMART CHOICE, to be used in connection with the goods in Class 29 as identified in Application No. 85/113,289, is confusingly similar to Opposer's Marks as used and registered by Opposer.

17. Upon information and belief, the goods in Class 29 to which to which Applicant's Mark SMART CHOICE will be applied are related to, or identical to, various products on and in connection with which Opposer and its predecessors-in-interest have used, and are using, the mark SMART ONES.

18. Upon information and belief, the goods in Class 29 to which Applicant's Mark SMART CHOICE will be applied, and the products on and in connection with which Opposer

uses its mark SMART ONES, are products that are offered for sale and sold in identical channels of trade.

19. Upon information and belief, the goods in Class 29 to which Applicant's Mark SMART CHOICE will be applied, and the products on and in connection with which Opposer uses its mark SMART ONES, are products that are offered for sale and sold to the same class of purchasers.

20. Upon information and belief, both Opposer's goods and Applicant's goods in Class 29 as identified in the Application are relatively low-priced and may be purchased on impulse by consumers.

**COUNT I**  
**LIKELIHOOD OF CONFUSION**

21. H. J. Heinz Company incorporates each and every allegation of Paragraphs 1-20 of this Notice as though fully set forth herein.

22. In view of the fame of Opposer's Marks, the similarity of the respective marks, similarity of the channels of trade, related nature of the goods and the relatively low-priced nature of the goods, the mark shown in the Application so resembles Opposer's Marks so as to be likely to cause confusion, or to cause mistake, or to deceive as to source by suggesting that Applicant's goods in Class 29 are associated with or approved, endorsed, affiliated, authorized or sponsored by Opposer.

23. In view of the fame of Opposer's Marks, the similarity of the respective marks, similarity of the channels of trade, related nature of the goods and the relatively low-priced nature of the goods, the mark shown in the Application so resembles Opposer's Marks so as to be likely to cause confusion, or to cause mistake, or to deceive as to source by suggesting that

Opposer's goods are associated with or approved, endorsed, affiliated, authorized or sponsored by Applicant.

**COUNT II**  
**TRADEMARK DILUTION**

24. H. J. Heinz Company incorporates each and every allegation of Paragraphs 1-23 of this Notice as though fully set forth herein.

25. SMART ONES has become famous in accordance with the standard set forth in 15 U.S.C. § 1125(c).

26. Applicant filed the Application for SMART CHOICE after Opposer's SMART ONES mark became famous.

27. Applicant's Mark is likely to cause the dilution of the distinctiveness of Opposer's famous SMART ONES mark.

WHEREFORE, Opposer prays that Application Serial No. 85/113,289 be rejected for the goods in Class 29 as identified in the Application on the basis of: (1) likelihood of confusion and (2) likelihood of dilution; and that no registration be issued thereon to Applicant for Class 29 and that this Opposition be sustained in favor of Opposer.

Dated this 26th day of May, 2011.

Respectfully submitted,

By: s/Timothy P. Fraelich/  
Timothy P. Fraelich  
Ryan T. Holte  
JONES DAY  
901 Lakeside Avenue  
Cleveland, Ohio 44114-1190  
(216) 586-3939 (phone)  
(216) 579-0212 (fax)  
tfraelich@jonesday.com  
rholte@jonesday.com

Attorneys for Opposer  
H. J. Heinz Company

**CERTIFICATE OF SERVICE**

A copy of the foregoing was served on this 26th day of May, 2011, via first-class mail upon Applicant:

Mark Sterner  
5425 Wilson Street  
Riverside, CA 92509

s/Ryan T. Holte/  
Attorney for Opposer



## United States Patent and Trademark Office

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## Opposition

Number: 91198512

Filing Date: 02/08/2011

Status: Terminated

Status Date: 03/29/2011

Interlocutory Attorney: ROBERT COGGINS

## Defendant

Name: Peter D. Koleoglou

Correspondence: DANIEL P. BURKE  
 DANIEL P. BURKE & ASSOCIATES, PLLC  
 240 TOWNSEND SQ  
 OYSTER BAY, NY 11771-2339  
 UNITED STATES  
 dburke@dpburke.com

Serial #: 77874610Application File

Application Status: Notice of Allowance - Issued

Mark: SMART ONE

## Plaintiff

Name: ProMark Brands Inc.

Correspondence: ASHLEY H. ZITO  
 JONES DAY  
 901 LAKESIDE AVENUE  
 CLEVELAND, OH 44114  
 UNITED STATES  
 tfraelich@jonesday.com, pcyingier@jonesday.com,  
 awilkes@jonesday.com

Serial #: 74528148Application FileRegistration #: 1911590

Application Status: Renewed

Mark: SMART ONES

Serial #: 75415119Application FileRegistration #: 2204080

Application Status: Renewed

Mark: SMART ONES

Serial #: 78352011Application FileRegistration #: 2916539

Application Status: Section 8 and 15 - Accepted and Acknowledged

Mark: SMART ONES

Serial #: 78351994Application FileRegistration #: 2916538

Application Status: Section 8 and 15 - Accepted and Acknowledged

Mark: SMART ONES

Serial #: 77368176Application FileRegistration #: 3462182

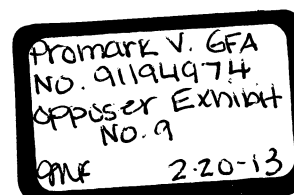
Application Status: Registered

Mark: SMART ONES

## Prosecution History

# Date History Text

Due Date

<http://ttabvue.uspto.gov/ttabvue/v?pno=91198512&pty=OPP>

6/22/2011

HEINZ 000736

6 03/29/2011 TERMINATED  
5 03/29/2011 BD'S DECISION: DISMISSED W/O PREJUDICE  
4 03/21/2011 WITHDRAWAL OF OPPOSITION  
3 02/08/2011 PENDING, INSTITUTED  
2 02/08/2011 NOTICE AND TRIAL DATES SENT; ANSWER DUE: 03/20/2011  
1 02/08/2011 FILED AND FEE

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ESTTA Tracking number:

**ESTTA392251**

Filing date:

**02/08/2011**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	ProMark Brands Inc.
Granted to Date of previous extension	02/09/2011
Address	2541 North Stokesberry PlaceSuite 100 Meridian, ID 83642 UNITED STATES
Attorney information	Timothy P. Fraelich, Ashley H. Wilkes JONES DAY 901 Lakeside Avenue Cleveland, OH 44114 UNITED STATES tfraclich@jonesday.com, pcyingier@jonesday.com, awilkes@jonesday.com

**Applicant Information**

Application No	77874610	Publication date	10/12/2010
Opposition Filing Date	02/08/2011	Opposition Period Ends	02/09/2011
Applicant	Peter D. Koleoglou 88 Henry Road Southampton, NY 11969 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 028. All goods and services in the class are opposed, namely: Golf balls; Golf club bags; Golf club swing aids, namely, putting aids in the nature of golf putter attachment for improving user's putting stroke; Golf clubs; Golf putters; Putting practice mats
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**Grounds for Opposition**


Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

**Marks Cited by Opposer as Basis for Opposition**


U.S. Registration No.	1911590	Application Date	05/20/1994
Registration Date	08/15/1995	Foreign Priority Date	NONE
Word Mark	SMART ONES		


Design Mark	
Description of Mark	NONE
Goods/Services	Class 029. First use: First Use: 1992/05/01 First Use In Commerce: 1992/05/01 frozen entrees consisting primarily of chicken, beef, fish and/or vegetables Class 030. First use: First Use: 1992/05/01 First Use In Commerce: 1992/05/01 frozen entrees consisting primarily of pasta and/or rice alone or in combination with other foods

U.S. Registration No.	2204080	Application Date	01/08/1998
Registration Date	11/17/1998	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/11/03 First Use In Commerce: 1997/11/03 Frozen desserts consisting of milk based or milk substitute based desserts, cakes, pies and mousses		

U.S. Registration No.	2916539	Application Date	01/14/2004
Registration Date	01/04/2005	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2001/04/01 First Use In Commerce: 2001/04/01 Pre-cooked ready-to-eat frozen bread or wrap having a meat and/or vegetable filling with or without cheese		

U.S. Registration No.	2916538	Application Date	01/14/2004
Registration Date	01/04/2005	Foreign Priority Date	NONE
Word Mark	SMART ONES		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 1997/11/30 First Use In Commerce: 1997/11/30 Pizza

U.S. Registration No.	3462182	Application Date	01/10/2008
Registration Date	07/08/2008	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/12/31 First Use In Commerce: 1997/12/31 Frozen foods, namely, breakfast sandwiches and muffins		

Attachments	78352011#TMSN.jpeg ( 1 page )( bytes ) 78351994#TMSN.jpeg ( 1 page )( bytes ) 77368176#TMSN.jpeg ( 1 page )( bytes ) Notice_SMARTONE.pdf ( 7 pages )(22664 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Ashley H. Wilkes/
Name	Timothy P. Fraelich, Ashley H. Wilkes

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Date	02/08/2011
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of

U.S. Trademark Application 77/874,610  
For the Mark SMART ONE  
Published in the Official Gazette on October 12, 2010

PROMARK BRANDS INC.,

Opposer,

v.

PETER D. KOLEOGLOU

Applicant.

Opposition No. \_\_\_\_\_

Commissioner of Trademarks  
Box TTAB  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

**NOTICE OF OPPOSITION**

1. Opposer, ProMark Brands Inc. ("Opposer"), a corporation duly organized and existing under the laws of Idaho and having a place of business at 2541 North Stokesberry Place, Suite 100, Meridian, Idaho 83646, believes that it will be damaged by the registration of the mark SMART ONE ("Applicant's Mark") shown in trademark application Serial No. 77/874,610 (the "Application") and hereby opposes same pursuant to 15 U.S.C. §§ 1052 and 1063.

2. To the best of Opposer's knowledge, the name and address of the current owner of the Application is Peter D. Koleoglou ("Applicant"), 88 Henry Road, Southampton, New York 11969, United States.

As grounds for opposition, it is alleged that:

**OPPOSER'S REGISTERED MARKS**

3. Opposer is the owner of the following registrations in the United States Patent and Trademark Office which registrations have not been cancelled, are valid and in full force and effect:

<b>Trademark</b>	<b>Registration/ Serial No.</b>	<b>Registration/ Filing Date</b>	<b>International Class/Goods</b>
SMART ONES	1,911,590	August 15, 1995	29 – Frozen entrees consisting primarily of chicken, beef, fish and/or vegetables.
SMART ONES	2,204,080	November 17, 1998	30 – Frozen desserts consisting of milk based or milk substitute based desserts, cakes, pies and mousses.
SMART ONES	2,916,539	January 4, 2005	30 – Pre-cooked ready-to-eat frozen bread or wrap having a meat and/or vegetable filling with or without cheese.
SMART ONES	2,916,538	January 4, 2005	30 – Pizza.
SMART ONES	3,462,182	July 8, 2008	30 – Frozen foods, namely, breakfast sandwiches and muffins.

(collectively, "the SMART ONES Mark"). Registration Nos. 1,911,590 and 2,204,080 have become incontestable as a matter of law under 15 U.S.C. § 1065.

4. Opposer's ownership in Registration Nos. 1,911,590 and 2,204,080 results from the following chain of title:

<b>Assignment</b>	by Weight Watchers International, Inc. to H.J. Heinz Company (recorded at Reel 1971/Frame 0642);
<b>Assignment</b>	by H.J. Heinz Company to ProMark International, Inc.

	(recorded at Reel 2327/Frame 0405);
<b>Merger</b>	of ProMark International, Inc. with H.J. Heinz Company (recorded at Reel 2633/Frame 0413);
<b>Assignment</b>	by H.J. Heinz Company to ProMark Brands Inc. (recorded at Reel 2631/Frame 0678).

#### OPPOSER'S USE OF ITS FAMOUS MARKS

5. Opposer, through its predecessors and licensee, since at least as early as May 1, 1992, has been, and is now, using the mark SMART ONES throughout the United States in connection with the goods described above.

6. Opposer's use of the SMART ONES Mark, as described above, has been valid and continuous since the date of first use.

7. Opposer has made substantial sales of goods under the SMART ONES Mark.

8. Opposer's continuous, exclusive and commercially-successful use of the SMART ONES Mark is symbolic of extensive good will and consumer recognition built up by Opposer through substantial amounts of time, money and effort in manufacturing, advertising and promotion.

9. Upon information and belief, Opposer's SMART ONES Mark is widely and highly recognized by the general, consuming public of the United States as a designation of source of Opposer's goods.

10. Upon information and belief, the SMART ONES Mark has come to serve as a unique and famous identifier of Opposer's goods.

### **THE APPLICATION**

11. Notwithstanding Opposer's prior rights, on November 17, 2009, Applicant filed the Application on an intent-to-use basis to register the mark SMART ONE to identify:

Golf balls; Golf club bags; Golf club swing aids, namely, putting aids in the nature of golf putter attachment for improving user's putting stroke; Golf clubs; Golf putters; Putting practice mats in **International Class 28**.

12. The Application was published in the Official Gazette on October 12, 2010.

13. Applicant has not filed an amendment to allege use as of February 8, 2011.

### **COUNT I LIKELIHOOD OF CONFUSION**

14. ProMark incorporates each and every allegation of Paragraphs 1-13 of this Notice as though fully set forth herein.

15. Opposer's use of the SMART ONES Mark long predates any alleged use by Applicant for Applicant's Mark.

16. Opposer's use of the SMART ONES Mark long predates the filing date of the Application.

17. Upon information and belief, Applicant was aware of Opposer and Opposer's long-standing use of the SMART ONES Mark when it filed the Application.

18. Upon information and belief, Applicant's Mark SMART ONE, to be used in connection with the goods in Class 28, as identified in Application No. 77/874,610, is confusingly similar to the SMART ONES Mark as used and registered by Opposer..

19. Due to the similarity of the marks involved, and other factors, confusion is likely as between Applicant's Mark SMART ONE and Opposer's SMART ONES Mark, pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).



20. Registration of Applicant's Mark is likely to cause confusion or mistake in the minds of consumers, and to lead the relevant public into believing that Applicant's goods are Opposers, or are affiliated with, endorsed, approved or sponsored by Opposer, or are otherwise connected with Opposer, all to the damage and injury of Opposer and the relevant public.

21. In view of the above, the grant of a registration for Applicant's Mark, as sought in the Application, should be denied.

**COUNT II**  
**TRADEMARK DILUTION**

22. ProMark incorporates each and every allegation of Paragraphs 1-21 of this Notice as though fully set forth herein.

23. Through extensive use, advertising and promotion, the SMART ONES Mark has become famous in accordance with the standard set forth in 15 U.S.C. § 1125(c).

24. The SMART ONES Mark was well established and famous long before the filing date of the Application and at the time that Applicant filed the Application.

25. Registration of Applicant's Mark is likely to cause the dilution of the distinctiveness of Opposer's famous SMART ONES Mark, to the injury of Opposer, by lessening the capacity of the SMART ONES Mark to identify and distinguish Opposer's goods and services, or otherwise diluting or tarnishing Opposer's famous SMART ONES Mark.

26. Based on the foregoing, the grant of a registration for Applicant's Mark as sought in the Application should be denied based on a likelihood of dilution of the distinctive quality of Opposer's SMART ONES Mark, in violation of Section 43 (c) of the Lanham Act, 15 U.S.C. § 1125(c).

WHEREFORE, Opposer prays that Application Serial No. 77/874,610 be rejected for the goods in Class 28 as identified in the Application on the basis of: (1) likelihood of confusion and (2) likelihood of dilution; and that no registration be issued thereon to Applicant and that this Opposition be sustained in favor of Opposer.

Dated this 8th day of February, 2011.

Respectfully submitted,

By: /s/Ashley H. Wilkes  
Timothy P. Fraelich  
Ashley H. Wilkes  
JONES DAY  
901 Lakeside Avenue  
Cleveland, Ohio 44114-1190  
(216) 586-3939 (phone)  
(216) 579-0212 (fax)  
tfraclich@jonesday.com  
awilkes@jonesday.com

Attorneys for Opposer  
ProMark Brands Inc.

**CERTIFICATE OF SERVICE**

A copy of the foregoing was served on this 8th day of February, 2011, via first-class mail upon the Attorney of Record for Applicant:

Daniel P. Burke, Esq.  
Daniel P. Burke & Associates, PLLC  
240 Townsend Square  
Oyster Bay, New York 11771-2339

/s/Ashley H. Wilkes  
Attorney for Opposer



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## TTABVUE. Trademark Trial and Appeal Board Inquiry System

v1.5

**Opposition****Number:** 91197932**Filing Date:** 12/21/2010**Status:** Pending**Status Date:** 12/21/2010**Interlocutory Attorney:** ELIZABETH A DUNN**Defendant****Name:** AdvancePierre Foods, Inc.**Correspondence:** THEODORE D. LIENESCH

THOMPSON HINE LLP

PO BOX 8801

DAYTON, OH 45401-8801

UNITED STATES

Ted.Lienesch@thompsonhine.com, Trademarks@thompsonhine.com

**Serial #:** 85076856[Application File](#)**Application Status:** Opposition Pending**Mark:** SMART PICKS**Plaintiff****Name:** ProMark Brands Inc.**Correspondence:** TIMOTHY P FRAELICH

JONES DAY

901 LAKESIDE AVE

CLEVELAND, OH 44114

UNITED STATES

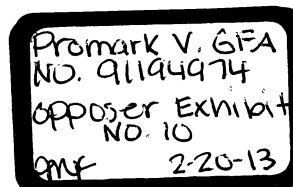
tfraclich@jonesday.com, awilkes@jonesday.com

**Serial #:** 74528148[Application File](#)**Registration #:** 1911590**Application Status:** Renewed**Mark:** SMART ONES**Serial #:** 75415119[Application File](#)**Registration #:** 2204080**Application Status:** Renewed**Mark:** SMART ONES**Serial #:** 78352011[Application File](#)**Registration #:** 2916539**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** SMART ONES**Serial #:** 78351994[Application File](#)**Registration #:** 2916538**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** SMART ONES**Serial #:** 77368176[Application File](#)**Registration #:** 3462182**Application Status:** Registered**Mark:** SMART ONES**Prosecution History**

#	Date	History Text
9	04/26/2011	<u>SUSPENDED</u>

**Due Date**<http://ttabvue.uspto.gov/ttabvue/v?pno=91197932&pty=OPP>

6/22/2011



HEINZ 000706

8	04/26/2011	<u>STIP TO SUSPEND PEND SETTLEMENT NEGOTNS</u>	
7	01/28/2011	<u>SUSPENDED</u>	
6	01/28/2011	<u>STIP TO SUSPEND PEND SETTLEMENT NEGOTNS</u>	
5	01/12/2011	<u>BOARD'S ORDER TRIAL DATES REMAIN AS SET</u>	
4	01/06/2011	<u>D'S MOTION TO JOIN/SUBSTITUTE PARTY</u>	
3	12/21/2010	PENDING, INSTITUTED	
2	12/21/2010	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	01/30/2011
1	12/21/2010	<u>FILED AND FEE</u>	

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ESTTA Tracking number:

**ESTTA384981**

Filing date:

**12/21/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	ProMark Brands Inc.		
Entity	Corporation	Citizenship	Idaho
Address	2541 North Stokesberry Place Suite 100 Meridian, ID 83646 UNITED STATES		

Attorney information	Timothy P. Fraelich, Ashley H. Wilkes Jones Day 901 Lakeside Avenue Cleveland, OH 44114 UNITED STATES traelich@jonesday.com, awilkes@jonesday.com, pcyngier@jonesday.com Phone:(216) 586-3939
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**Applicant Information**

Application No	85076856	Publication date	11/30/2010
Opposition Filing Date	12/21/2010	Opposition Period Ends	12/30/2010
Applicant	Pierre Foods, Inc. 9990 Princeton Glendale Road Cincinnati, OH 452461127 UNITED STATES		

**Goods/Services Affected by Opposition**

<p><b>Class 029.</b> All goods and services in the class are opposed, namely: beef, all-meat beef steak, flame broiled beef steak patties, soy-added beef patties, beef rib patties, flame broiled lean beef patties, flame broiled beef patties, flame broiled beef steaks, flame broiled beef patties with onion, flame broiled beef patties with mesquite seasoning, charbroiled beef patties, charbroiled beef patties with mesquite seasoning, chicken, breaded chicken patties, spicy breaded chicken patties, teriyaki chicken for dipping, breaded chicken nuggets, flame broiled teriyaki chicken breast patties, flame broiled barbeque chicken breast patties, flame broiled chicken breast patties with teriyaki sauce, flame broiled mesquite chicken cutlets, flame broiled chicken breast filets, flame broiled chicken breast patties with Honey mustard sauce, chicken breast drumsticks with honey barbeque sauce, grilled chicken patties, flame broiled chicken breast strips with honey barbeque sauce, teriyaki chicken breasts, mesquite chicken filets, pork, pork rib patties, pork sausage patties, cooked veggie ribs made of meat substitutes with honey barbeque sauce</p>
<p><b>Class 030.</b> All goods and services in the class are opposed, namely: sandwiches, beef patty sandwiches, grilled chicken sandwiches, burger sandwiches, beef rib sandwiches, white whole wheat mini twin cheeseburger sandwiches, white whole wheat mini twin burger sandwiches, white whole wheat mini twin breaded chicken sandwiches, white whole wheat mini twin beef sausage sandwiches, white whole wheat mini twin asian chicken sandwiches, white whole wheat mini twin barbeque pork rib</p>

sandwiches, white whole wheat mini twin pork sausage sandwiches, white whole wheat mini twin barbeque beef rib sandwiches, crustless peanut butter and grape jelly sandwiches on wheat bread, crustless peanut butter and strawberry jam sandwiches on wheat bread, crustless peanut butter and banana sandwiches on wheat bread, crustless peanut butter and honey sandwich on wheat bread, graham cracker and peanut butter and jelly combinations in bar form, bread sticks, whole wheat breadsticks, wheat breadsticks, whole cinnamon biscuits, white whole cinnamon biscuits, white whole wheat breadsticks, sliced buttermilk biscuits, whole grain macaroni and cheese

### Grounds for Opposition


Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)


### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1911590	Application Date	05/20/1994
Registration Date	08/15/1995	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1992/05/01 First Use In Commerce: 1992/05/01 frozen entrees consisting primarily of chicken, beef, fish and/or vegetables Class 030. First use: First Use: 1992/05/01 First Use In Commerce: 1992/05/01 frozen entrees consisting primarily of pasta and/or rice alone or in combination with other foods		

U.S. Registration No.	2204080	Application Date	01/08/1998
Registration Date	11/17/1998	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/11/03 First Use In Commerce: 1997/11/03 Frozen desserts consisting of milk based or milk substitute based desserts, cakes, pies and mousses		


U.S. Registration No.	2916539	Application Date	01/14/2004
Registration Date	01/04/2005	Foreign Priority Date	NONE
Word Mark	SMART ONES		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2001/04/01 First Use In Commerce: 2001/04/01 Pre-cooked ready-to-eat frozen bread or wrap having a meat and/or vegetable filling with or without cheese

U.S. Registration No.	2916538	Application Date	01/14/2004
Registration Date	01/04/2005	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/11/30 First Use In Commerce: 1997/11/30 Pizza		

U.S. Registration No.	3462182	Application Date	01/10/2008
Registration Date	07/08/2008	Foreign Priority Date	NONE
Word Mark	SMART ONES		



Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 1997/12/31 First Use In Commerce: 1997/12/31 Frozen foods, namely, breakfast sandwiches and muffins

Attachments	78352011#TMSN.jpeg ( 1 page )( bytes ) 78351994#TMSN.jpeg ( 1 page )( bytes ) 77368176#TMSN.jpeg ( 1 page )( bytes ) Notice of Opposition.pdf ( 8 pages )(24715 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Ashley H. Wilkes/
Name	Timothy P. Fraelich, Ashley H. Wilkes
Date	12/21/2010

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of

U.S. Trademark Application 85/076,856

For the Mark **SMART PICKS**

Published in the Official Gazette on November 30, 2010

PROMARK BRANDS INC.,

Opposer,

v.

ADVANCEPIERRE FOODS, INC.

Applicant.

Opposition No. \_\_\_\_\_

Commissioner of Trademarks  
Box TTAB  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

**NOTICE OF OPPOSITION**

1. Opposer, ProMark Brands Inc. ("Opposer"), a corporation duly organized and existing under the laws of Idaho and having a place of business at 2541 North Stokesberry Place, Suite 100, Meridian, Idaho 83646, believes that it will be damaged by the registration of the mark SMART PICKS ("Applicant's Mark") shown in trademark application Serial No. 85/076,856 (the "Application") and hereby opposes same pursuant to 15 U.S.C. §§ 1052 and 1063.

2. To the best of Opposer's knowledge, the name and address of the current owner of the Application is Advancepierre Foods, Inc. ("Applicant"), 9990 Princeton Glendale Road, Cincinnati, Ohio, 45246-1127, United States.

As grounds for opposition, it is alleged that:

### **The Application**

3. Applicant's predecessor in interest, Pierre Foods, Inc., filed the Application on July 2, 2010 on an intent-to-use basis to register the mark SMART PICKS to identify:

a. beef, all-meat beef steak, flame broiled beef steak patties, soy-added beef patties, beef rib patties, flame broiled lean beef patties, flame broiled beef patties, flame broiled beef steaks, flame broiled beef patties with onion, flame broiled beef patties with mesquite seasoning, charbroiled beef patties, charbroiled beef patties with mesquite seasoning, chicken, breaded chicken patties, spicy breaded chicken patties, teriyaki chicken for dipping, breaded chicken nuggets, flame broiled teriyaki chicken breast patties, flame broiled barbeque chicken breast patties, flame broiled chicken breast patties with teriyaki sauce, flame broiled mesquite chicken cutlets, flame broiled chicken breast fillets, flame broiled chicken breast patties with Honey mustard sauce, chicken breast drumsticks with honey barbeque sauce, grilled chicken patties, flame broiled chicken breast strips with honey barbeque sauce, teriyaki chicken breasts, mesquite chicken filets, pork, pork rib patties, pork sausage patties, cooked veggie ribs made of meat substitutes with honey barbeque sauce in **International Class 29**; and

b. sandwiches, beef patty sandwiches, grilled chicken sandwiches, burger sandwiches, beef rib sandwiches, white whole wheat mini twin cheeseburger sandwiches, white whole wheat mini twin burger sandwiches, white whole wheat mini twin breaded chicken sandwiches, white whole wheat mini twin beef sausage sandwiches, white whole wheat mini twin asian chicken sandwiches, white whole wheat mini twin barbeque pork rib sandwiches, white whole wheat mini twin pork sausage sandwiches, white whole wheat mini twin barbeque beef rib sandwiches, crustless peanut butter and grape jelly sandwiches on wheat bread, crustless peanut butter and strawberry jam sandwiches on wheat bread, crustless peanut butter and banana sandwiches on wheat bread, crustless peanut butter and honey sandwich on wheat bread, graham cracker and peanut butter and jelly combinations in bar form, bread sticks, whole wheat breadsticks, wheat breadsticks, whole cinnamon biscuits, white whole cinnamon biscuits, white whole wheat breadsticks, sliced buttermilk biscuits, whole grain macaroni and cheese in **International Class 30**.

4. The Application was published in the Official Gazette on November 30, 2010.

5. Upon information and belief, the Application was assigned by Pierre Foods, Inc.

to Applicant on November 29, 2010 and the assignment was recorded with the United States Patent and Trademark Office on December 6, 2010.

6. Applicant has not filed an amendment to allege use as of December 21, 2010.

**Opposer's Registered Marks**

7. Opposer is the owner of the following registrations in the United States Patent and Trademark Office for SMART ONES ("Opposer's Marks"), which registrations have not been cancelled, are valid and in full force and effect:

<b>Trademark</b>	<b>Registration/ Serial No.</b>	<b>Registration/ Filing Date</b>	<b>International Class/Goods</b>
SMART ONES	1,911,590	August 15, 1995	29 – Frozen entrees consisting primarily of chicken, beef, fish and/or vegetables.
SMART ONES	2,204,080	November 17, 1998	30 – Frozen desserts consisting of milk based or milk substitute based desserts, cakes, pies and mousses.
SMART ONES	2,916,539	January 4, 2005	30 – Pre-cooked ready-to-eat frozen bread or wrap having a meat and/or vegetable filling with or without cheese.
SMART ONES	2,916,538	January 4, 2005	30 – Pizza.
SMART ONES	3,462,182	July 8, 2008	30 – Frozen foods, namely, breakfast sandwiches and muffins.

Registration Nos. 1,911,590 and 2,204,080 have become incontestable as a matter of law under 15 U.S.C. § 1065.

8. Opposer's ownership in Registration Nos. 1,911,590 and 2,204,080 results from the following chain of title:

<b>Assignment</b>	by Weight Watchers International, Inc. to H.J. Heinz Company (recorded at Reel 1971/Frame 0642);
<b>Assignment</b>	by H.J. Heinz Company to ProMark International, Inc. (recorded at Reel 2327/Frame 0405);
<b>Merger</b>	of ProMark International, Inc. with H.J. Heinz Company (recorded at Reel 2633/Frame 0413);
<b>Assignment</b>	by H.J. Heinz Company to ProMark Brands Inc. (recorded at Reel 2631/Frame 0678).

### **Opposer's Use Of Its Famous Marks**

9. Opposer, through its predecessors and licensee, since at least as early as May 1, 1992, has been, and is now, using the mark SMART ONES throughout the United States in connection with the goods described above.

10. Opposer's use of Opposer's Marks, as described above, has been valid and continuous since the date of first use.

11. Opposer's continuous, exclusive and commercially-successful use of the mark SMART ONES is symbolic of extensive good will and consumer recognition built up by Opposer through substantial amounts of time, money and effort in manufacturing, advertising and promotion.

12. Upon information and belief, Opposer's SMART ONES mark is widely and highly recognized by the general, consuming public of the United States as a designation of source of Opposer's goods.

13. Upon information and belief, the mark SMART ONES has come to serve as a unique and famous identifier of Opposer's goods.

### **Dilution And Confusion Are Likely**

14. Opposer's use of the mark SMART ONES predates any alleged use by Applicant for Applicant's Mark.

15. Opposer's use of the mark SMART ONES predates the filing date of the Application.

16. Opposer's Marks were well established and famous long before the filing date of the Application and at the time that Applicant filed the Application.

17. Upon information and belief, Applicant's Mark SMART PICKS, to be used in connection with the goods in Classes 29 and 30 as identified in Application No. 85/076,856 is confusingly similar to Opposer's Marks as used and registered by Opposer.

18. Upon information and belief, the products with which Applicant's Mark SMART PICKS will be used are related to, or identical to, various products on and in connection with which Opposer and its predecessors-in-interest have used, and are using, the mark SMART ONES.

19. Upon information and belief, the goods to which Applicant's Mark SMART PICKS will be applied and the products on and in connection with which Opposer uses its mark SMART ONES, are products that are offered for sale and sold in identical channels of trade.

20. Upon information and belief, the goods to which Applicant's Mark SMART PICKS will be applied and the products on and in connection with which Opposer uses its mark SMART ONES, are products that are offered for sale and sold to the same class of purchasers.

21. Upon information and belief, both Opposer's goods and Applicant's goods are relatively low-priced and may be purchased on impulse by consumers.

**COUNT I**  
**LIKELIHOOD OF CONFUSION**

22. ProMark incorporates each and every allegation of Paragraphs 1-21 of this Notice as though fully set forth herein.

23. In view of the fame of Opposer's Marks, the similarity of the respective marks, similarity of the channels of trade, related nature of the goods and the relatively low-priced nature of the goods, the mark shown in the Application so resembles Opposer's Marks as to be likely to cause confusion, or to cause mistake, or to deceive as to source by suggesting that

Applicant's goods are associated with or approved, endorsed, affiliated, authorized or sponsored by Opposer.

24. In view of the fame of Opposer's Marks, the similarity of the respective marks, similarity of the channels of trade, related nature of the goods and the relatively low-priced nature of the goods, the mark shown in the Application so resembles Opposer's Marks as to be likely to cause confusion, or to cause mistake, or to deceive as to source by suggesting that Opposer's goods are associated with or approved, endorsed, affiliated, authorized or sponsored by Applicant.

**COUNT II**  
**TRADEMARK DILUTION**

25. ProMark incorporates each and every allegation of Paragraphs 1-24 of this Notice as though fully set forth herein.

26. SMART ONES has become famous in accordance with the standard set forth in 15 U.S.C. § 1125(c).

27. Applicant filed the Application for SMART PICKS after Opposer's SMART ONES marks became famous.

28. Applicant's Mark is likely to cause dilution of the distinctiveness of Opposer's famous SMART ONES marks.

WHEREFORE, Opposer prays that Application Serial No. 85/076,856 be rejected on the basis of: (1) likelihood of confusion and (2) likelihood of dilution; and that no registration be issued thereon to Applicant and that this Opposition be sustained in favor of Opposer.

Dated this 21<sup>st</sup> day of December, 2010.

Respectfully submitted,

By: /s/ Ashley H. Wilkes

Timothy P. Fraelich  
Ashley H. Wilkes  
JONES DAY  
901 Lakeside Avenue  
Cleveland, Ohio 44114-1190  
(216) 586-3939 (phone)  
(216) 579-0212 (fax)  
tfraclich@jonesday.com  
awilkes@jonesday.com

Attorneys for Opposer  
ProMark Brands Inc.



**CERTIFICATE OF SERVICE**

A copy of the foregoing was served on this 21st day of December, 2010, via first-class mail upon the Attorney of Record for Applicant:

Theodore D. Lienesch  
Thompson Hine LLP  
Po Box 8801  
Dayton, Oh 45401-8801

/s/ Ashley H. Wilkes  
Attorney for Opposer



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## Opposition

**Number:** 91197483**Filing Date:** 11/22/2010**Status:** Terminated**Status Date:** 02/02/2011**Interlocutory Attorney:** CHERYL S GOODMAN

## Defendant

**Name:** Société des Produits Nestlé S.A.**Correspondence:** JACQUELINE M STELLINGNESTLE NUTRITION  
12 VREELAND ROAD, 2ND FLOOR  
FLORHAM PARK, NJ 07932-1521  
UNITED STATES  
[jacqueline.stelling@us.nestle.com](mailto:jacqueline.stelling@us.nestle.com)**Serial #:** 77757499[Application File](#)**Application Status:** Notice of Allowance - Issued**Mark:** SMARTNOURISH

## Plaintiff

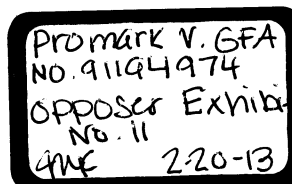
**Name:** ProMark Brand Inc.**Correspondence:** TIMOTHY P FRAELICHJONES DAY  
901 LAKESIDE AVENUE  
CLEVELAND, OH 44114  
UNITED STATES  
[jwalworth@JonesDay.com](mailto:jwalworth@JonesDay.com)**Serial #:** 74528148[Application File](#)**Registration #:** 1911590**Application Status:** Renewed**Mark:** SMART ONES**Serial #:** 75415119[Application File](#)**Registration #:** 2204080**Application Status:** Renewed**Mark:** SMART ONES**Serial #:** 78352011[Application File](#)**Registration #:** 2916539**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** SMART ONES**Serial #:** 78351994[Application File](#)**Registration #:** 2916538**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** SMART ONES**Serial #:** 77368176[Application File](#)**Registration #:** 3462182**Application Status:** Registered**Mark:** SMART ONES

## Prosecution History

# Date History Text

8 02/02/2011 TERMINATED

Due Date

<http://ttabvue.uspto.gov/ttabvue/v?pno=91197483&pty=OPP>

6/22/2011

HEINZ 000680

7 02/02/2011 BD'S DECISION; DISMISSED W/O PREJUDICE

6 01/31/2011 D'S REQUEST TO AMEND APPLICATION WITH CONSENT AND  
WITHDRAWAL OF OPPOSITION

5 12/22/2010 EXTENSION OF TIME GRANTED

4 12/22/2010 STIPULATION FOR AN EXTENSION OF TIME

3 11/22/2010 PENDING, INSTITUTED

2 11/22/2010 NOTICE AND TRIAL DATES SENT; ANSWER DUE:

01/01/2011

1 11/22/2010 FILED AND FEE

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ESTTA Tracking number:

**ESTTA379766**

Filing date:

**11/22/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	ProMark Brand Inc.
Granted to Date of previous extension	11/21/2010
Address	2541 North Stokesberry Place Meridian, ID 83646 UNITED STATES

Attorney information	Timothy P. Fraelich Jones Day 901 Lakeside Ave Cleveland, OH 44114 UNITED STATES tfraelich@jonesday.com, jwalworth@jonesday.com, pcynghier@jonesday.com, jwalworth@jonesday.com Phone:216-586-1247
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**Applicant Information**

Application No	77757499	Publication date	05/25/2010
Opposition Filing Date	11/22/2010	Opposition Period Ends	11/21/2010
Applicant	Soci��t�� des Produits Nestl�� S.A. Intellectual Property Department CASE POSTALE 353 1800 VEVEY, SWITZERLAND		

**Goods/Services Affected by Opposition**

Class 029. All goods and services in the class are opposed, namely: Freeze-dried fruits and vegetables, pre-packaged meals consisting primarily of meat, poultry, vegetables, cheese and fruit; fruit based snack foods; fruit and yogurt based snack foods, dairy-based beverages; cheese and milk products excluding ice cream, ice milk and frozen yogurt; yogurts
Class 030. All goods and services in the class are opposed, namely: Pre-packaged meals consisting primarily of pasta with meat sauce, pasta and sauce; processed meat; bakery products, namely, crackers, cookies, biscuits; grain-based snack foods, namely, whole grain snacks
Class 032. All goods and services in the class are opposed, namely: Fruit and vegetable juices; bottled drinking water


**Grounds for Opposition**


Priority and likelihood of confusion	Trademark Act section 2(d)
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## Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1911590	Application Date	05/20/1994
Registration Date	08/15/1995	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1992/05/01 First Use In Commerce: 1992/05/01 frozen entrees consisting primarily of chicken, beef, fish and/or vegetables Class 030. First use: First Use: 1992/05/01 First Use In Commerce: 1992/05/01 frozen entrees consisting primarily of pasta and/or rice alone or in combination with other foods		

U.S. Registration No.	2204080	Application Date	01/08/1998
Registration Date	11/17/1998	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/11/03 First Use In Commerce: 1997/11/03 Frozen desserts consisting of milk based or milk substitute based desserts, cakes, pies and mousses		

U.S. Registration No.	2916539	Application Date	01/14/2004
Registration Date	01/04/2005	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2001/04/01 First Use In Commerce: 2001/04/01 Pre-cooked ready-to-eat frozen bread or wrap having a meat and/or vegetable filling with or without cheese		

U.S. Registration No.	2916538	Application Date	01/14/2004
Registration Date	01/04/2005	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/11/30 First Use In Commerce: 1997/11/30 Pizza		

U.S. Registration No.	3462182	Application Date	01/10/2008
Registration Date	07/08/2008	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/12/31 First Use In Commerce: 1997/12/31 Frozen foods, namely, breakfast sandwiches and muffins		

Attachments	78352011#TMSN.jpeg ( 1 page )( bytes ) 78351994#TMSN.jpeg ( 1 page )( bytes ) 77368176#TMSN.jpeg ( 1 page )( bytes ) 931063205022.pdf ( 8 pages )(231177 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address

record by Facsimile or email (by agreement only) on this date.

Signature	/Timothy P. Fraelich/
Name	Timothy P. Fraelich
Date	11/22/2010

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of

U.S. Trademark Application 77/757499  
For the Mark **SMARTNOURISH**  
Published in the Official Gazette on May 25, 2010

PROMARK BRANDS INC.,

Opposer,

Opposition No. \_\_\_\_\_

v.

SOCIÉTÉ DES PRODUITS NESTLÉ S.A.,

Applicant.

Commissioner of Trademarks  
Box TTAB  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

**NOTICE OF OPPOSITION**

1. Opposer, ProMark Brands Inc. ("Opposer"), a corporation duly organized and existing under the laws of Idaho and having a place of business at 2541 North Stokesberry Place, Suite 100, Meridian, ID 83646, believes that it will be damaged by the registration of the mark SMARTNOURISH ("Applicant's Mark") shown in trademark application Serial No. 77/757,499 (the "Application") and hereby opposes same pursuant to 15 U.S.C. §§ 1052 and 1063.

2. To the best of Opposer's knowledge, the name and address of the current owner of the Application is Société des Produits Nestlé S.A. ("Applicant"), 12 Vreeland Rd, Florham Park, NJ 07932, United States.



As grounds for opposition, it is alleged that:

### **The Application**

3. Applicant filed the Application on an intent-to-use basis to register the mark SMARTNOURISH to identify:

- a. Blend of nutrients and minerals sold as an ingredient in food for babies; Infant Formula; Food and food substances for babies in International Class 5;
- b. Freeze-dried fruits and vegetables, pre-packaged meals consisting primarily of meat, poultry, vegetables, cheese and fruit; fruit based snack foods; fruit and yogurt based snack foods, dairy-based beverages; cheese and milk products excluding ice cream, ice milk and frozen yogurt; yogurts in International Class 29;
- c. Pre-packaged meals consisting primarily of pasta with meat sauce, pasta and sauce; processed meat; bakery products, namely, crackers, cookies, biscuits; grain-based snack foods, namely, whole grain snacks in International Class 30; and
- d. Fruit and vegetable juices; bottled drinking water in International Class 32.

4. The Application was published in the Official Gazette on May 25, 2010.

5. Opposer was granted an extension of time to oppose until November 21, 2010.

6. Applicant has not filed an amendment to allege use as of November 21, 2010.

2010.

### **Opposer's Registered Marks**

7. Opposer is the owner of the following registrations in the United States Patent and Trademark Office for SMART ONES ("Opposer's Marks"), which registrations have not been cancelled, are valid and in full force and effect:

<b>Trademark</b>	<b>Registration/ Serial No.</b>	<b>Registration/ Filing Date</b>	<b>International Class/Goods</b>
SMART ONES	1,911,590	August 15, 1995	29 – Frozen entrees consisting primarily of chicken, beef, fish and/or vegetables.

<b>Trademark</b>	<b>Registration/ Serial No.</b>	<b>Registration/ Filing Date</b>	<b>International Class/Goods</b>
SMART ONES	2,204,080	November 17, 1998	30 – Frozen desserts consisting of milk based or milk substitute based desserts, cakes, pies and mousses.
SMART ONES	2,916,539	January 4, 2005	30 – Pre-cooked ready-to-eat frozen bread or wrap having a meat and/or vegetable filling with or without cheese.
SMART ONES	2,916,538	January 4, 2005	30 – Pizza.
SMART ONES	3,462,182	July 8, 2008	30 – Frozen foods, namely, breakfast sandwiches and muffins.

Registration Nos. 1,911,590 and 2,204,080 have become incontestable as a matter of law under 15 U.S.C. § 1065.

8. Opposer's ownership in Registration Nos. 1,911,590 and 2,204,080 results from the following chain of title:

<b>Assignment</b>	by Weight Watchers International, Inc. to H.J. Heinz Company (recorded at Reel 1971/Frame 0642);
<b>Assignment</b>	by H.J. Heinz Company to ProMark International, Inc. (recorded at Reel 2327/Frame 0405);
<b>Merger</b>	of ProMark International, Inc. with H.J. Heinz Company (recorded at Reel 2633/Frame 0413);
<b>Assignment</b>	by H.J. Heinz Company to ProMark Brands Inc. (recorded at Reel 2631/Frame 0678).

#### **Opposer's Use Of Its Famous Marks**

9. Opposer, through its predecessors and licensee, since at least as early as May 1, 1992, has been, and is now, using the mark SMART ONES throughout the United States in connection with the goods described above.

10. Opposer's use of Opposer's Marks, as described above, has been valid and continuous since the date of first use.

11. Opposer's continuous, exclusive and commercially-successful use of the mark SMART ONES is symbolic of extensive good will and consumer recognition built up by Opposer through substantial amounts of time, money and effort in manufacturing, advertising and promotion.

12. Upon information and belief, Applicant's SMART ONES mark is widely and highly recognized by the general, consuming public of the United States as a designation of source of Opposer's goods.

13. Upon information and belief, the mark SMART ONES has come to serve as a unique and famous identifier of Opposer's goods.

**Dilution And Confusion Are Likely**

14. Opposer's use of the mark SMART ONES predates any alleged use by Applicant for Applicant's Mark.

15. Opposer's use of the mark SMART ONES predates the filing date of the Application.

16. Opposer's Marks were well established and famous long before the filing date of the Application and at the time that Applicant filed the Application.

17. Upon information and belief, Applicant's Mark SMARTNOURISH, to be used in connection with the goods covered by Application No. 77/864,305, is confusingly similar to Opposer's Marks as used and registered by Opposer.

18. Upon information and belief, the products to which Applicant's Mark SMARTNOURISH will be used are related to, or identical to, various products on and in connection with which Opposer and its predecessors-in-interest have used, and are using, the mark SMART ONES.

19. Upon information and belief, the goods to which Applicant's Mark SMARTNOURISH will be applied, and the products on and in connection with which Opposer uses its mark SMART ONES, are products that are offered for sale and sold in identical channels of trade.

20. Upon information and belief, the goods to which Applicant's Mark SMARTNOURISH will be applied, and the products on and in connection with which Opposer uses its mark SMART ONES, are products that are offered for sale and sold to the same class of purchasers.

21. Upon information and belief, both Opposer's goods and Applicant's goods are relatively low-priced and may be purchased on impulse by consumers.

**COUNT I**  
**LIKELIHOOD OF CONFUSION**

22. ProMark incorporates each and every allegation of Paragraphs 1-21 of this Notice as though fully set forth herein.

23. In view of the fame of Opposer's Marks, the similarity of the respective marks, similarity of the channels of trade, related nature of the goods and the relatively low-priced nature of the goods, the mark shown in the Application so resembles Opposer's Marks so as to be likely to cause confusion, or to cause mistake, or to deceive as to source by suggesting that Applicant's goods are associated with or approved, endorsed, affiliated, authorized or sponsored by Opposer.

24. In view of the fame of Opposer's Marks, the similarity of the respective marks, similarity of the channels of trade, related nature of the goods and the relatively low-priced nature of the goods, the mark shown in the Application so resembles Opposer's Marks so as to be likely to cause confusion, or to cause mistake, or to deceive as to source by suggesting that

Opposer's goods are associated with or approved, endorsed, affiliated, authorized or sponsored by Applicant.

**COUNT II**  
**TRADEMARK DILUTION**

25. ProMark incorporates each and every allegation of Paragraphs 1-24 of this Notice as though fully set forth herein.

26. SMART ONES has become famous in accordance with the standard set forth in 15 U.S.C. § 1125(c).

27. Applicant filed the Application for SMARTNOURISH after Opposer's SMART ONES mark became famous.

28. Applicant's Mark is likely to cause the dilution of the distinctiveness of the Opposer's famous SMART ONES mark.

WHEREFORE, Opposer prays that Application Serial No. 77/757,499 be rejected in its entirety on the basis of: (1) likelihood of confusion and (2) likelihood of dilution; and that no registration be issued thereon to Applicant and that this Opposition be sustained in favor of Opposer.

Dated this 22nd day of November, 2010.

Respectfully submitted,

By: /James W. Walworth, Jr./  
Timothy P. Fraelich  
James W. Walworth, Jr.  
JONES DAY  
901 Lakeside Avenue  
Cleveland, Ohio 44114-1190  
(216) 586-3939 (phone)  
(216) 579-0212 (fax)  
tfraclich@jonesday.com  
jwalworth@jonesday.com

Attorneys for Opposer  
ProMark Brands Inc.

**CERTIFICATE OF SERVICE**

A copy of the foregoing was served on this 22nd day of November, 2010, via electronic mail upon the Attorney of Record for Applicant:

Jacqueline M. Stelling  
Nestle Nutrition  
12 Vreeland Rd.  
Florham Park, NJ 07932

/James W. Walworth, Jr./  
Attorney for Opposer



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v1.5

**Opposition****Number:** 91197301**Filing Date:** 11/08/2010**Status:** Terminated**Status Date:** 05/03/2011**Interlocutory Attorney:** MARY CATHERINE FAINT**Defendant****Name:** Sears Brands, LLC**Correspondence:** MARK R GALIS

GREENBERG TRAURIG LLP

77 WEST WACKER DRIVE, SUITE 3100

CHICAGO, IL 60601-1732

UNITED STATES

dunningj@gtlaw.com, galism@gtlaw.com, chlpmail@gtlaw.com

**Serial #:** 77735593Application File**Application Status:** Notice of Allowance - Issued**Mark:** SMART SENSE**Plaintiff****Name:** ProMark Brands Inc.**Correspondence:** TIMOTHY P FRAELICH

JONES DAY

901 LAKESIDE AVENUE

CLEVELAND, OH 44114-1190

UNITED STATES

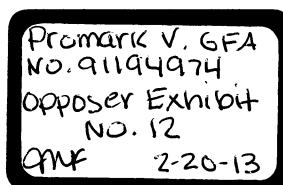
tfraclich@jonesday.com, awilkes@jonesday.com

**Serial #:** 74528148Application File**Registration #:** 1911590**Application Status:** Renewed**Mark:** SMART ONES**Serial #:** 75415119Application File**Registration #:** 2204080**Application Status:** Renewed**Mark:** SMART ONES**Serial #:** 78352011Application File**Registration #:** 2916539**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** SMART ONES**Serial #:** 78351994Application File**Registration #:** 2916538**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** SMART ONES**Serial #:** 77368176Application File**Registration #:** 3462182**Application Status:** Registered**Mark:** SMART ONES**Prosecution History**

#	Date	History Text
11	05/03/2011	TERMINATED

**Due Date**<http://ttabvue.uspto.gov/ttabvue/v?pno=91197301&pty=OPP>

6/22/2011



HEINZ 000644



<u>10</u>	05/03/2011	<u>BD'S DECISION: DISMISSED W/O PREJUDICE</u>	
<u>9</u>	04/28/2011	<u>WITHDRAWAL OF OPPOSITION</u>	
<u>8</u>	04/27/2011	<u>D'S MOTION FOR AMENDMENT TO APPLICATION</u>	
<u>7</u>	04/26/2011	<u>D'S MOTION FOR AMENDMENT OF APPLICATION</u>	
<u>6</u>	01/18/2011	<u>ANSWER</u>	
<u>5</u>	12/08/2010	<u>EXTENSION OF TIME GRANTED</u>	
<u>4</u>	12/08/2010	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
<u>3</u>	11/08/2010	PENDING, INSTITUTED	
<u>2</u>	11/08/2010	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	12/18/2010
<u>1</u>	11/08/2010	<u>FILED AND FEE</u>	

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ESTTA Tracking number:

**ESTTA377389**

Filing date:

**11/08/2010**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	ProMark Brands Inc.
Granted to Date of previous extension	11/07/2010
Address	2541 North Stokesberry Place, Suite 100 Meridian, ID 83646 UNITED STATES
Attorney information	Timothy P. Fraelich, Ashley H. Wilkes Jones Day 901 Lakeside Avenue Cleveland, OH 44114-1190 UNITED STATES tfraclich@jonesday.com, pcynsier@jonesday.com, awilkes@jonesday.com

**Applicant Information**

Application No	77735593	Publication date	05/11/2010
Opposition Filing Date	11/08/2010	Opposition Period Ends	11/07/2010
Applicant	Sears Brands, LLC 3333 Beverly Road Hoffman Estates, IL 60179 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 030. All goods and services in the class are opposed, namely: Chewing gum, candy, processed cheese spread, breakfast cereals, oatmeal, quick oats, coffee, tea, iced tea, cookies, crackers, ketchup, mustard, relish, mayonnaise, barbecue sauce, macaroni and cheese, packaged entrees consisting primarily of pasta, rice cakes, spices, sugar, brown sugar, powdered sugar, sugar substitutes, vinegar, granola, granola snacks
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**Grounds for Opposition**


Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

**Marks Cited by Opposer as Basis for Opposition**


U.S. Registration No.	1911590	Application Date	05/20/1994
Registration Date	08/15/1995	Foreign Priority	NONE


		Date	
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1992/05/01 First Use In Commerce: 1992/05/01 frozen entrees consisting primarily of chicken, beef, fish and/or vegetables Class 030. First use: First Use: 1992/05/01 First Use In Commerce: 1992/05/01 frozen entrees consisting primarily of pasta and/or rice alone or in combination with other foods		

U.S. Registration No.	2204080	Application Date	01/08/1998
Registration Date	11/17/1998	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/11/03 First Use In Commerce: 1997/11/03 Frozen desserts consisting of milk based or milk substitute based desserts, cakes, pies and mousses		

U.S. Registration No.	2916539	Application Date	01/14/2004
Registration Date	01/04/2005	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2001/04/01 First Use In Commerce: 2001/04/01 Pre-cooked ready-to-eat frozen bread or wrap having a meat and/or vegetable filling with or without cheese		

U.S. Registration No.	2916538	Application Date	01/14/2004
Registration Date	01/04/2005	Foreign Priority Date	NONE
Word Mark	SMART ONES		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 1997/11/30 First Use In Commerce: 1997/11/30 Pizza

U.S. Registration No.	3462182	Application Date	01/10/2008
Registration Date	07/08/2008	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/12/31 First Use In Commerce: 1997/12/31 Frozen foods, namely, breakfast sandwiches and muffins		

Attachments	78352011#TMSN.jpeg ( 1 page )( bytes ) 78351994#TMSN.jpeg ( 1 page )( bytes ) 77368176#TMSN.jpeg ( 1 page )( bytes ) Notice.pdf ( 7 pages )(22543 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Ashley H. Wilkes/
Name	Timothy P. Fraelich, Ashley H. Wilkes

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Date	11/08/2010
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of

U.S. Trademark Application 77/735,593  
For the Mark SMART SENSE  
Published in the Official Gazette on May 11, 2010

PROMARK BRANDS INC.,

Opposer,

v.

SEARS BRANDS, LLC

Applicant.

Opposition No. \_\_\_\_\_

Commissioner of Trademarks  
Box TTAB  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

**NOTICE OF OPPOSITION**

1. Opposer, ProMark Brands Inc. ("Opposer"), a corporation duly organized and existing under the laws of Idaho and having a place of business at 2541 North Stokesberry Place, Suite 100, Meridian, Idaho 83646, believes that it will be damaged by the registration of the mark SMART SENSE ("Applicant's Mark") shown in trademark application Serial No. 77/735,593 (the "Application") and hereby opposes same pursuant to 15 U.S.C. §§ 1052 and 1063.

2. To the best of Opposer's knowledge, the name and address of the current owner of the Application is Sears Brands, LLC ("Applicant"), 3333 Beverly Road, Hoffman Estates, Illinois, 60179, United States.

As grounds for opposition, it is alleged that:

### **The Application**

3. Applicant filed the Application on an intent-to-use basis to register the mark SMART SENSE to identify, among other goods:

chewing gum, candy, processed cheese spread, breakfast cereals, oatmeal, quick oats, coffee, tea, iced tea, cookies, crackers, ketchup, mustard, relish, mayonnaise, barbecue sauce, macaroni and cheese, packaged entrees consisting primarily of pasta, rice cakes, spices, sugar, brown sugar, powdered sugar, sugar substitutes, vinegar, granola, granola snacks in **International Class 30**.

4. The Application was published in the Official Gazette on May 11, 2010.
5. Applicant has not filed an amendment to allege use as of November 8, 2010.

### **Opposer's Registered Marks**

6. Opposer is the owner of the following registrations in the United States Patent and Trademark Office for SMART ONES ("Opposer's Marks"), which registrations have not been cancelled, are valid and in full force and effect:

<b>Trademark</b>	<b>Registration/ Serial No.</b>	<b>Registration/ Filing Date</b>	<b>International Class/Goods</b>
SMART ONES	1,911,590	August 15, 1995	29 – Frozen entrees consisting primarily of chicken, beef, fish and/or vegetables.
SMART ONES	2,204,080	November 17, 1998	30 – Frozen desserts consisting of milk based or milk substitute based desserts, cakes, pies and mousses.
SMART ONES	2,916,539	January 4, 2005	30 – Pre-cooked ready-to-eat frozen bread or wrap having a meat and/or vegetable filling with or without cheese.
SMART ONES	2,916,538	January 4, 2005	30 – Pizza.
SMART ONES	3,462,182	July 8, 2008	30 – Frozen foods, namely, breakfast sandwiches and muffins.

Registration Nos. 1,911,590 and 2,204,080 have become incontestable as a matter of law under 15 U.S.C. § 1065.

7. Opposer's ownership in Registration Nos. 1,911,590 and 2,204,080 results from the following chain of title:

<b>Assignment</b>	by Weight Watchers International, Inc. to H.J. Heinz Company (recorded at Reel 1971/Frame 0642);
<b>Assignment</b>	by H.J. Heinz Company to ProMark International, Inc. (recorded at Reel 2327/Frame 0405);
<b>Merger</b>	of ProMark International, Inc. with H.J. Heinz Company (recorded at Reel 2633/Frame 0413);
<b>Assignment</b>	by H.J. Heinz Company to ProMark Brands Inc. (recorded at Reel 2631/Frame 0678).

#### **Opposer's Use Of Its Famous Marks**

8. Opposer, through its predecessors and licensee, since at least as early as May 1, 1992, has been, and is now, using the mark SMART ONES throughout the United States in connection with the goods described above.

9. Opposer's use of Opposer's Marks, as described above, has been valid and continuous since the date of first use.

10. Opposer's continuous, exclusive and commercially-successful use of the mark SMART ONES is symbolic of extensive good will and consumer recognition built up by Opposer through substantial amounts of time, money and effort in manufacturing, advertising and promotion.

11. Upon information and belief, Applicant's SMART ONES mark is widely and highly recognized by the general, consuming public of the United States as a designation of source of Opposer's goods.

12. Upon information and belief, the mark SMART ONES has come to serve as a unique and famous identifier of Opposer's goods.



**Dilution And Confusion Are Likely**

13. Opposer's use of the mark SMART ONES predates any alleged use by Applicant for Applicant's Mark.

14. Opposer's use of the mark SMART ONES predates the filing date of the Application.

15. Opposer's Marks were well established and famous long before the filing date of the Application and at the time that Applicant filed the Application.

16. Upon information and belief, Applicant's Mark SMART SENSE, to be used in connection with the goods in Class 30 as identified in Application No. 77/735,593, is confusingly similar to Opposer's Marks as used and registered by Opposer.

17. Upon information and belief, the goods in Class 30 to which Applicant's Mark SMART SENSE will be applied are related to, or identical to, various products on and in connection with which Opposer and its predecessors-in-interest have used, and are using, the mark SMART ONES.

18. Upon information and belief, the goods in Class 30 to which Applicant's Mark SMART SENSE will be applied, and the products on and in connection with which Opposer uses its mark SMART ONES, are products that are offered for sale and sold in identical channels of trade.

19. Upon information and belief, the goods in Class 30 to which Applicant's Mark SMART SENSE will be applied, and the products on and in connection with which Opposer uses its mark SMART ONES, are products that are offered for sale and sold to the same class of purchasers.

20. Upon information and belief, both Opposer's goods and Applicant's goods in Class 30 as identified in the Application are relatively low-priced and may be purchased on impulse by consumers.

**COUNT I**  
**LIKELIHOOD OF CONFUSION**

21. ProMark incorporates each and every allegation of Paragraphs 1-20 of this Notice as though fully set forth herein.

22. In view of the fame of Opposer's Marks, the similarity of the respective marks, similarity of the channels of trade, related nature of the goods and the relatively low-priced nature of the goods, the mark shown in the Application so resembles Opposer's Marks so as to be likely to cause confusion, or to cause mistake, or to deceive as to source by suggesting that Applicant's goods in Class 30 are associated with or approved, endorsed, affiliated, authorized or sponsored by Opposer.

23. In view of the fame of Opposer's Marks, the similarity of the respective marks, similarity of the channels of trade, related nature of the goods and the relatively low-priced nature of the goods, the mark shown in the Application so resembles Opposer's Marks so as to be likely to cause confusion, or to cause mistake, or to deceive as to source by suggesting that Opposer's goods are associated with or approved, endorsed, affiliated, authorized or sponsored by Applicant.

**COUNT II**  
**TRADEMARK DILUTION**

24. ProMark incorporates each and every allegation of Paragraphs 1-23 of this Notice as though fully set forth herein.

25. SMART ONES has become famous in accordance with the standard set forth in 15 U.S.C. § 1125(c).

26. Applicant filed the Application for SMART SENSE after Opposer's SMART  
ONES mark became famous.

27. Applicant's Mark is likely to cause the dilution of the distinctiveness of Opposer's  
famous SMART ONES mark.

WHEREFORE, Opposer prays that Application Serial No. 77/864,305 be rejected for the  
goods in Class 30 as identified in the Application on the basis of: (1) likelihood of confusion and  
(2) likelihood of dilution; and that no registration be issued thereon to Applicant for Class 30 and  
that this Opposition be sustained in favor of Opposer.

Dated this 8<sup>th</sup> day of November, 2010.

Respectfully submitted,

By: Ashley H. Wilkes /  
Timothy P. Fraelich  
Ashley H. Wilkes  
JONES DAY  
901 Lakeside Avenue  
Cleveland, Ohio 44114-1190  
(216) 586-3939 (phone)  
(216) 579-0212 (fax)  
tfraclich@jonesday.com  
awilkes@jonesday.com

Attorneys for Opposer  
ProMark Brands Inc.

**CERTIFICATE OF SERVICE**

A copy of the foregoing was served on this 8<sup>th</sup> day of November, 2010, via first-class mail upon the Attorney of Record for Applicant:

Mark R. Galis, Esq.  
Greenberg Traurig, LLP  
Suite 3100  
77 West Wacker Drive  
Chicago IL 60601-1732

/Ashley H. Wilkes /  
Attorney for Opposer



United States Patent and Trademark Office

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## Opposition

**Number:** 91193347**Filing Date:** 01/11/2010**Status:** Terminated**Status Date:** 04/15/2011**Interlocutory Attorney:** JENNIFER KRISP

### Defendant

**Name:** FL Food Lion, Inc.

**Correspondence:** JOHN GARY MAYNARD III  
 HUNTON & WILLIAMS LLP  
 RIVERFRONT PLAZA EAST TOWER, 951 EAST BYRD STREET  
 RICHMOND, VA 23219-4074  
 UNITED STATES  
 jgmaynard@hunton.com

**Serial #:** 77563885[Application File](#)**Application Status:** Notice of Allowance - Issued**Mark:** SMART OPTION

### Plaintiff

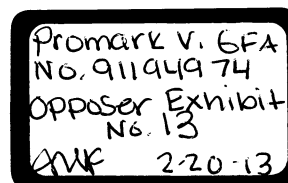
**Name:** ProMark Brands Inc.

**Correspondence:** TIMOTHY P. FRAELICH  
 JONES DAY  
 NORTH POINT, 901 LAKESIDE AVENUE  
 CLEVELAND, OH 44114  
 UNITED STATES  
 azito@jonesday.com, tfracielich@jonesday.com,  
 pcynghier@jonesday.com

**Serial #:** 74528148[Application File](#)**Registration #:** 1911590**Application Status:** Renewed**Mark:** SMART ONES**Serial #:** 75415119[Application File](#)**Registration #:** 2204080**Application Status:** Renewed**Mark:** SMART ONES**Serial #:** 78352011[Application File](#)**Registration #:** 2916539**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** SMART ONES**Serial #:** 78351994[Application File](#)**Registration #:** 2916538**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** SMART ONES**Serial #:** 77368176[Application File](#)**Registration #:** 3462182**Application Status:** Registered**Mark:** SMART ONES

### Prosecution History

#	Date	History Text	Due Date
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<http://ttabvue.uspto.gov/ttabvue/v?pno=91193347&pty=OPP>


6/22/2011

HEINZ 000453

23	04/15/2011	TERMINATED	
22	04/15/2011	<u>BD'S DECISION: DISMISSED W/O PREJUDICE</u>	
21	04/12/2011	<u>SUPPLEMENT TO MOTION TO AMEND</u>	
20	04/11/2011	<u>WITHDRAWAL OF OPPOSITION</u>	
19	04/06/2011	<u>MOTION TO AMEND APPLICATION</u>	
18	03/15/2011	<u>SUSPENDED</u>	
17	03/15/2011	<u>STIP TO SUSPEND PEND SETTLEMENT NEGOTNS</u>	
16	12/21/2010	<u>SUSPENDED</u>	
15	12/21/2010	<u>STIP TO SUSPEND PEND SETTLEMENT NEGOTNS</u>	
14	09/29/2010	<u>TRIAL DATES RESET</u>	
13	09/23/2010	<u>P'S MOT TO SUSP PEND SETLMT NEGOTIATIONS</u>	
12	09/01/2010	<u>EXTENSION OF TIME GRANTED</u>	
11	08/23/2010	<u>P'S MOT TO SUSP PEND SETLMT NEGOTIATIONS</u>	
10	07/22/2010	<u>SUSPENDED</u>	
9	07/16/2010	<u>P'S MOT TO SUSP PEND SETLMT NEGOTIATIONS</u>	
8	06/25/2010	<u>SUSPENDED</u>	
7	06/21/2010	<u>P'S MOT TO SUSP PEND SETLMT NEGOTIATIONS</u>	
6	04/15/2010	<u>EXTENSION OF TIME GRANTED</u>	
5	04/07/2010	<u>P'S MOT TO SUSP PEND SETLMT NEGOTIATIONS</u>	
4	02/18/2010	<u>ANSWER</u>	
3	01/11/2010	PENDING, INSTITUTED	
2	01/11/2010	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	02/20/2010
1	01/11/2010	<u>FILED AND FEE</u>	

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ESTTA Tracking number: **ESTTA326137**

Filing date: **01/11/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	ProMark Brands Inc.
Granted to Date of previous extension	01/10/2010
Address	2541 North Stokesberry Place, Suite 100 Meridian, ID 83646 UNITED STATES
Attorney information	Timothy P. Fraelich Jones Day 901 Lakeside Avenue Cleveland, OH 44114 UNITED STATES traelich@jonesday.com, jwalworth@jonesday.com, pcyngier@jonesday.com Phone:216 586 3939

**Applicant Information**

Application No	77563885	Publication date	07/14/2009
Opposition Filing Date	01/11/2010	Opposition Period Ends	01/10/2010
Applicant	FL Food Lion, Inc. 2110 Executive Drive Salisbury, NC 28145 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 016. All goods and services in the class are opposed, namely: Lunch bags
Class 021. All goods and services in the class are opposed, namely: Dinnerware, namely, cups and plates
Class 029. All goods and services in the class are opposed, namely: Frozen strawberries; cole slaw; chicken salad; and fresh chicken
Class 030. All goods and services in the class are opposed, namely: Frozen pizza
Class 031. All goods and services in the class are opposed, namely: Pet litter


**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
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## Marks Cited by Opposer as Basis for Opposition


U.S. Registration No.	1911590	Application Date	05/20/1994
Registration Date	08/15/1995	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1992/05/01 First Use In Commerce: 1992/05/01 frozen entrees consisting primarily of chicken, beef, fish and/or vegetables Class 030. First use: First Use: 1992/05/01 First Use In Commerce: 1992/05/01 frozen entrees consisting primarily of pasta and/or rice alone or in combination with other foods		

U.S. Registration No.	2204080	Application Date	01/08/1998
Registration Date	11/17/1998	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/11/03 First Use In Commerce: 1997/11/03 Frozen desserts consisting of milk based or milk substitute based desserts, cakes, pies and mousses		

U.S. Registration No.	2916539	Application Date	01/14/2004
Registration Date	01/04/2005	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2001/04/01 First Use In Commerce: 2001/04/01 Pre-cooked ready-to-eat frozen bread or wrap having a meat and/or vegetable filling with or without cheese		



U.S. Registration No.	2916538	Application Date	01/14/2004
Registration Date	01/04/2005	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/11/30 First Use In Commerce: 1997/11/30 Pizza		

U.S. Registration No.	3462182	Application Date	01/10/2008
Registration Date	07/08/2008	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/12/31 First Use In Commerce: 1997/12/31 Frozen foods, namely, breakfast sandwiches and muffins		

Attachments	78352011#TMSN.jpeg ( 1 page )( bytes ) 78351994#TMSN.jpeg ( 1 page )( bytes ) 77368176#TMSN.jpeg ( 1 page )( bytes ) DOC208.pdf ( 7 pages )(212164 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address

record by First Class Mail on this date.

Signature	/Timothy P. Fraelich/
Name	Timothy P. Fraelich
Date	01/11/2010

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of

U.S. Trademark Application 77/563,885  
For the Mark **SMART OPTION**  
Published in the Official Gazette on July 14, 2009

PROMARK BRANDS INC.,

Opposer,

Opposition No. \_\_\_\_\_

v.

FL FOOD LION, INC.,

Applicant.

Commissioner of Trademarks  
Box TTAB  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

**NOTICE OF OPPOSITION**

1. Opposer, ProMark Brands Inc. ("Opposer"), a corporation duly organized and existing under the laws of Idaho and having a place of business at 2541 North Stokesberry Place, Suite 100, Meridian, ID 83646, believes that it will be damaged by the registration of the mark SMART OPTION ("Applicant's Mark") shown in trademark application Serial No. 77/563,885 (the "Application") and hereby opposes same pursuant to 15 U.S.C. §§ 1052 and 1063.

2. To the best of Opposer's knowledge, the name and address of the current owner of the Application is FL Food Lion, Inc. ("Applicant"), 2110 Executive Drive, Salisbury, North Carolina 28145, United States.

As grounds for opposition, it is alleged that:

3. Applicant has filed the Application on an intent-to-use basis to register the mark SMART OPTION to identify:
  - a. Lunch bags in International Class 16;
  - b. Dinnerware, namely, cups and plates, in International Class 21;
  - c. Frozen strawberries; coleslaw; chicken salad; and fresh chicken in International Class 29;
  - d. Frozen pizza in International Class 30; and
  - e. Pet litter in International Class 31.
4. The Application was published in the Official Gazette on July 14, 2009.
5. Opposer has requested extensions of time to oppose the Application. Opposer's last request was granted on November 11, 2009. Pursuant to the Order of the Trademark Trial and Appeal Board, Opposer was granted until Sunday, January 10, 2009 to oppose the Application. Because that date is a Sunday, pursuant to TBMP § 209.02 and 37 C.F.R. § 2.196, Opposer has until January 11, 2009 to oppose the Application.
6. Applicant has not filed an amendment to allege use as of January 11, 2009.
7. Opposer is the owner of the following registrations in the United States Patent and Trademark Office for SMART ONES ("Opposer's Marks"), which registrations have not been cancelled, are valid and in full force and effect:

<b>Trademark</b>	<b>Registration/ Serial No.</b>	<b>Registration/ Filing Date</b>	<b>International Class/Goods</b>
SMART ONES	1,911,590	August 15, 1995	29 – Frozen entrees consisting primarily of chicken, beef, fish and/or vegetables.
SMART ONES	2,204,080	November 17, 1998	30 – Frozen desserts consisting of milk based or milk substitute based desserts, cakes, pies and mousses.
SMART ONES	2,916,539	January 4, 2005	30 – Pre-cooked ready-to-eat frozen bread or wrap having a meat and/or vegetable filling with or without cheese.

<b>Trademark</b>	<b>Registration/ Serial No.</b>	<b>Registration/ Filing Date</b>	<b>International Class/Goods</b>
SMART ONES	2,916,538	January 4, 2005	30 – Pizza.
SMART ONES	3,462,182	July 8, 2008	30 – Frozen foods, namely, breakfast sandwiches and muffins.

Registration Nos. 1,911,590 and 2,204,080 have become incontestable as a matter of law under 15 U.S.C. § 1065.

8. Opposer's ownership in Registration Nos. 1,911,590 and 2,204,080 results from the following chain of title:

<b>Assignment</b>	by Weight Watchers International, Inc. to H.J. Heinz Company (recorded at Reel 1971/Frame 0642);
<b>Assignment</b>	by H.J. Heinz Company to ProMark International, Inc. (recorded at Reel 2327/Frame 0405);
<b>Merger</b>	of ProMark International, Inc. with H.J. Heinz Company (recorded at Reel 2633/Frame 0413);
<b>Assignment</b>	by H.J. Heinz Company to ProMark Brands Inc. (recorded at Reel 2631/Frame 0678).

9. Opposer, through its predecessors and licensee, since at least as early as May 1, 1992, has been, and is now, using the mark SMART ONES throughout the United States in connection with the goods described above.

10. Opposer's use of Opposer's Marks, as described above, has been valid and continuous since the date of first use.

11. Opposer's continuous, exclusive and commercially-successful use of the mark SMART ONES is symbolic of extensive good will and consumer recognition built up by Opposer through substantial amounts of time, money and effort in manufacturing, advertising and promotion.

12. Upon information and belief, Applicant's SMART ONES mark is widely and highly recognized by the general, consuming public of the United States as a designation of source of Opposer's goods.

13. Upon information and belief, the mark SMART ONES has come to serve as a unique and famous identifier of Opposer's goods.

14. Opposer's use of the mark SMART ONES predates any alleged use by Applicant for Applicant's Mark.

15. Opposer's use of the mark SMART ONES predates the filing date of the Application.

16. Opposer's Marks were well established and famous long before the filing date of the Application and at the time that Applicant filed the Application.

17. Upon information and belief, Applicant's Mark SMART OPTION, to be used in connection with the goods covered by Application No. 77/563,885, is confusingly similar to Opposer's Marks as used and registered by Opposer.

18. Upon information and belief, the products to which Applicant's Mark SMART OPTION will be used are related to, or identical to, various products on and in connection with which Opposer and its predecessors-in-interest have used, and are using, the mark SMART ONES.

19. Upon information and belief, the goods to which Applicant's Mark SMART OPTION will be applied, and the products on and in connection with which Opposer uses its mark SMART ONES, are products that are offered for sale and sold in identical channels of trade.

20. Upon information and belief, the goods to which Applicant's Mark SMART OPTION will be applied, and the products on and in connection with which Opposer uses its mark SMART ONES, are products that are offered for sale and sold to the same class of purchasers.

21. Upon information and belief, both Opposer's goods and Applicant's goods are relatively low-priced and may be purchased on impulse by consumers.

**COUNT I**  
**LIKELIHOOD OF CONFUSION**

22. ProMark incorporates each and every allegation of Paragraphs 1-21 of this Notice as though fully set forth herein.

23. In view of the fame of Opposer's Marks, the similarity of the respective marks, similarity of the channels of trade, related nature of the goods and the relatively low-priced nature of the goods, the mark shown in the Application so resembles Opposer's Marks so as to be likely to cause confusion, or to cause mistake, or to deceive as to source by suggesting that Applicant's goods are associated with or approved, endorsed, affiliated, authorized or sponsored by Opposer.

24. In view of the fame of Opposer's Marks, the similarity of the respective marks, similarity of the channels of trade, related nature of the goods and the relatively low-priced nature of the goods, the mark shown in the Application so resembles Opposer's Marks so as to be likely to cause confusion, or to cause mistake, or to deceive as to source by suggesting that Opposer's goods are associated with or approved, endorsed, affiliated, authorized or sponsored by Applicant.

**COUNT II**  
**TRADEMARK DILUTION**

25. ProMark incorporates each and every allegation of Paragraphs 1-24 of this Notice as though fully set forth herein.

26. SMART ONES has become famous in accordance with the standard set forth in 15 U.S.C. § 1125(c).

27. Applicant filed the Application for SMART OPTION after Opposer's SMART ONES mark became famous.

28. Applicant's Mark is likely to cause the dilution of the distinctiveness of the Opposer's famous SMART ONES mark.

WHEREFORE, Opposer prays that Application Serial No. 77/563,885 be rejected in its entirety on the basis of: (1) likelihood of confusion and (2) likelihood of dilution; and that no registration be issued thereon to Applicant and that this Opposition be sustained in favor of Opposer.

Dated this 11th day of January, 2009.

Respectfully submitted,

By: /James W. Walworth, Jr./

Timothy P. Fraelich  
James W. Walworth, Jr.  
JONES DAY  
901 Lakeside Avenue  
Cleveland, Ohio 44114-1190  
(216) 586-3939 (phone)  
(216) 579-0212 (fax)  
tfraclich@jonesday.com  
jwalworth@jonesday.com

Attorneys for Opposer  
ProMark Brands Inc.



**CERTIFICATE OF SERVICE**

A copy of the foregoing was served on this 11th day of January, 2010, via first-class mail  
upon the Attorney of Record for Applicant:

John Gary Maynard, III, Esq.  
Hunton & Williams LLP  
Riverfront Plaza, East Tower  
951 East Byrd Street  
Richmond VA 23219-4074

/James W. Walworth, Jr./  
Attorney for Opposer



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**Opposition****Number:** 91191738**Filing Date:** 09/01/2009**Status:** Terminated**Status Date:** 12/09/2009**Interlocutory Attorney:** JENNIFER KRISP**Defendant****Name:** Deacon Dog Brands LLC**Correspondence:** MICHELLE A. MASSICOTTE

NIXON PEABODY LLP

100 SUMMER ST

BOSTON, MA 02110-2106

UNITED STATES

mmassicotte@nixonpeabody.com, rmcmullin@nixonpeabody.com,

cwalsh@nixonpeabody.com, matm@nixonpeabody.com

**Serial #:** 77688852[Application File](#)**Application Status:** Abandoned - After Inter-Partes Decision**Mark:** SMART FRY**Plaintiff****Name:** ProMark Brands Inc.**Correspondence:** Timothy P. Fraelich

JONES DAY

901 Lakeside Avenue

Cleveland, OH 44114

UNITED STATES

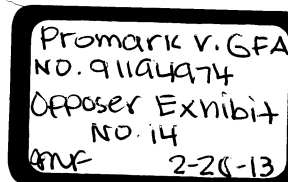
jwalworth@jonesday.com

**Serial #:** 74528148[Application File](#)**Registration #:** 1911590**Application Status:** Renewed**Mark:** SMART ONES**Serial #:** 75415119[Application File](#)**Registration #:** 2204080**Application Status:** Renewed**Mark:** SMART ONES**Serial #:** 78352011[Application File](#)**Registration #:** 2916539**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** SMART ONES**Serial #:** 78351994[Application File](#)**Registration #:** 2916538**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** SMART ONES**Serial #:** 77368176[Application File](#)**Registration #:** 3462182**Application Status:** Registered**Mark:** SMART ONES**Prosecution History**

# Date

History Text

Due Date

<http://ttabvue.uspto.gov/ttabvue/v?pno=91191738&pty=OPP>

6/22/2011

HEINZ 000430

8	12/09/2009	TERMINATED	
7	12/09/2009	<u>BOARD'S DECISION: SUSTAINED</u>	
6	12/09/2009	<u>WITHDRAWAL OF APPLICATION</u>	
5	10/09/2009	<u>EXTENSION OF TIME GRANTED</u>	
4	10/09/2009	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
3	09/01/2009	PENDING, INSTITUTED	
2	09/01/2009	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	10/11/2009
1	09/01/2009	<u>FILED AND FEE</u>	

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ESTTA Tracking number: **ESTTA303917**

Filing date: **09/01/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	ProMark Brands Inc.
Granted to Date of previous extension	09/12/2009
Address	2541 North Stokesberry Place Suite 100 Meridian, ID 83642 UNITED STATES
Attorney information	Timothy P. Fraelich JONES DAY 901 Lakeside Avenue Cleveland, OH 44114 UNITED STATES tfraclich@jonesday.com, jwalworth@jonesday.com, pcyingier@jonesday.com Phone: 216-586-3939

**Applicant Information**

Application No	77688852	Publication date	07/14/2009
Opposition Filing Date	09/01/2009	Opposition Period Ends	09/12/2009
Applicant	Deacon Dog Brands LLC Suite A210 17383 Sunset Boulevard Pacific Palisades, CA 90272 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 029. All goods and services in the class are opposed, namely: Frozen entrees consisting primarily of meat, seafood, poultry, or vegetables; packaged entrees consisting primarily of meat, seafood, poultry, or vegetables; frozen appetizers consisting primarily of meat, seafood, poultry, or vegetables; packaged appetizers consisting primarily of meat, seafood, poultry, or vegetables; frozen side dishes consisting primarily of meat, seafood, poultry, or vegetables; packaged side dishes consisting primarily of meat, seafood, poultry, or vegetables
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**Grounds for Opposition**


Priority and likelihood of confusion	Trademark Act section 2(d)
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**Marks Cited by Opposer as Basis for Opposition**


U.S. Registration No.	1911590	Application Date	05/20/1994
Registration Date	08/15/1995	Foreign Priority	NONE


		Date	
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1992/05/01 First Use In Commerce: 1992/05/01 frozen entrees consisting primarily of chicken, beef, fish and/or vegetables Class 030. First use: First Use: 1992/05/01 First Use In Commerce: 1992/05/01 frozen entrees consisting primarily of pasta and/or rice alone or in combination with other foods		

U.S. Registration No.	2204080	Application Date	01/08/1998
Registration Date	11/17/1998	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/11/03 First Use In Commerce: 1997/11/03 Frozen desserts consisting of milk based or milk substitute based desserts, cakes, pies and mousses		

U.S. Registration No.	2916539	Application Date	01/14/2004
Registration Date	01/04/2005	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2001/04/01 First Use In Commerce: 2001/04/01 Pre-cooked ready-to-eat frozen bread or wrap having a meat and/or vegetable filling with or without cheese		

U.S. Registration No.	2916538	Application Date	01/14/2004
Registration Date	01/04/2005	Foreign Priority Date	NONE
Word Mark	SMART ONES		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 1997/11/30 First Use In Commerce: 1997/11/30 Pizza

U.S. Registration No.	3462182	Application Date	01/10/2008
Registration Date	07/08/2008	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/12/31 First Use In Commerce: 1997/12/31 Frozen foods, namely, breakfast sandwiches and muffins		

Attachments	78352011#TMSN.jpeg ( 1 page )( bytes ) 78351994#TMSN.jpeg ( 1 page )( bytes ) 77368176#TMSN.jpeg ( 1 page )( bytes ) DOC140.pdf ( 7 pages )(189194 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Timothy P. Fraelich/
Name	Timothy P. Fraelich

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Date	09/01/2009
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of

U.S. Trademark Application 77/688,852  
For the Mark **SMART FRY**  
Published in the Official Gazette on July 14, 2009

PROMARK BRANDS INC.,

Opposer,

Opposition No. \_\_\_\_\_

v.

DEACON DOG BRANDS LLC,

Applicant.

Commissioner of Trademarks  
Box TTAB  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

**NOTICE OF OPPOSITION**

1. Opposer, ProMark Brands Inc. ("Opposer"), a corporation duly organized and existing under the laws of Idaho and having a place of business at 2541 North Stokesberry Place, Suite 100, Meridian, ID 83646, believes that it will be damaged by the registration of the mark SMART FRY shown in trademark application Serial No. 77/688,852 (the "Application") and hereby opposes same pursuant to 15 U.S.C. §§ 1052 and 1063.

2. To the best of Opposer's knowledge, the name and address of the current owner of the Application is Deacon Dog Brands LLC ("Applicant"), Suite A210, 17383 Sunset Boulevard, Pacific Palisades, CA 90272, United States.



As grounds for opposition, it is alleged that:

3. Applicant has filed the Application to register the mark SMART FRY to identify "[f]rozen entrees consisting primarily of meat, seafood, poultry, or vegetables; packaged entrees consisting primarily of meat, seafood, poultry, or vegetables; frozen appetizers consisting primarily of meat, seafood, poultry, or vegetables; packaged appetizers consisting primarily of meat, seafood, poultry, or vegetables; frozen side dishes consisting primarily of meat, seafood, poultry, or vegetables; packaged side dishes consisting primarily of meat, seafood, poultry, or vegetables."

4. The Application was published in the Official Gazette on July 14, 2009.

5. Opposer requested a 30-day extension of time to oppose the Application and Opposer's request was granted on August 11, 2009.

6. Applicant has not filed an amendment to allege use as of September 1, 2009.

7. Opposer is the owner of the following registrations in the United States Patent and Trademark Office for the SMART ONES marks ("Opposer's Marks"), which registrations have not been cancelled, are valid and in full force and effect:

<b>Trademark</b>	<b>Registration/ Serial No.</b>	<b>Registration/ Filing Date</b>	<b>International Class/Goods</b>
SMART ONES	1,911,590	August 15, 1995	29 – Frozen entrees consisting primarily of chicken, beef, fish and/or vegetables.
SMART ONES	2,204,080	November 17, 1998	30 – Frozen desserts consisting of milk based or milk substitute based desserts, cakes, pies and mousses.

SMART ONES	2,916,539	January 4, 2005	30 – Pre-cooked ready-to-eat frozen bread or wrap having a meat and/or vegetable filling with or without cheese.
SMART ONES	2,916,538	January 4, 2005	30 – Pizza.
SMART ONES	3,462,182	July 8, 2008	30 – Frozen foods, namely, breakfast sandwiches and muffins.

Registration Nos. 1,911,590 and 2,204,080 have become incontestable as a matter of law under 15 U.S.C. § 1065.

8. Opposer's ownership in Registration Nos. 1,911,590 and 2,204,080 results from the following chain of title:

<b>Assignment</b>	by Weight Watchers International, Inc. to H.J. Heinz Company (recorded at Reel 1971/Frame 0642);
<b>Assignment</b>	by H.J. Heinz Company to ProMark International, Inc. (recorded at Reel 2327/Frame 0405);
<b>Merger</b>	of ProMark International, Inc. with H.J. Heinz Company (recorded at Reel 2633/Frame 0413);
<b>Assignment</b>	by H.J. Heinz Company to ProMark Brands Inc. (recorded at Reel 2631/Frame 0678).

9. Opposer, through its predecessors and licensee, since at least as early as May 1, 1992, has been, and is now, using the mark SMART ONES throughout the United States in connection with the goods described above.

10. Opposer's use of Opposer's Marks, as described above, has been valid and continuous since the date of first use.

11. Opposer's continuous, exclusive and commercially-successful use of the mark SMART ONES is symbolic of extensive good will and consumer recognition built up by Opposer through substantial amounts of time, money and effort in manufacturing, advertising

and promotion. As such, the mark SMART ONES has come to serve as a unique and famous identifier of Opposer's goods.

12. Upon information and belief, Applicant's SMART ONES mark is widely and highly recognized by the general, consuming public of the United States as a designation of source of Opposer's goods.

13. Opposer's use of the mark SMART ONES predates any alleged use by Applicant for Applicant's Mark.

14. Opposer's use of the mark SMART ONES predates the filing date of the Application.

15. Opposer's Marks were well established and famous long before the filing date of the Application and at the time that Applicant filed the Application.

16. Upon information and belief, Applicant's Mark SMART FRY, to be used in connection with the goods covered by Application No. 77/688,852, is confusingly similar to Opposer's Marks as used and registered by Opposer.

17. Upon information and belief, the products to which Applicant's Mark will be used are closely related to, or identical to, various products on and in connection with which Opposer and its predecessors-in-interest have used, and are using, the mark SMART ONES.

18. Upon information and belief, the goods to which Applicant's Mark SMART FRY will be applied, and the products on and in connection with which Opposer uses its mark SMART ONES, are products that are: (1) offered for sale and sold in the same channels of trade, and (2) offered for sale and sold to the same class of purchasers.

**COUNT I**  
**LIKELIHOOD OF CONFUSION**

19. ProMark incorporates each and every allegation of Paragraphs 1-18 of this Notice as though fully set forth herein.

20. In view of the similarity of the respective marks, similarity of the channels of trade and the related nature of the goods offered for sale by the respective parties, it is alleged that Applicant's Mark SMART FRY so resembles Opposer's Marks, previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake or to deceive as to source by suggesting that Applicant's goods are associated with or approved, endorsed, affiliated, authorized or sponsored by Opposer.

**COUNT II**  
**TRADEMARK DILUTION**

21. ProMark incorporates each and every allegation of Paragraphs 1-20 of this Notice as though fully set forth herein.

22. SMART ONES has become famous in accordance with the standard set forth in 15 U.S.C. § 1125(c).

23. Applicant filed the Application for SMART FRY after Opposer's SMART ONES mark became famous.

24. Applicant's Mark is likely to cause the dilution of the distinctiveness of the Opposer's famous SMART ONES mark.

WHEREFORE, Opposer prays that Application Serial No. 77/688,852 be rejected on the basis of: (1) likelihood of confusion and (2) likelihood of dilution; and that no registration be issued thereon to Applicant and that this Opposition be sustained in favor of Opposer.

Dated this 1st day of September, 2009.

Respectfully submitted,

By: /James W. Walworth, Jr./

Timothy P. Fraelich  
James W. Walworth, Jr.  
JONES DAY  
901 Lakeside Avenue  
Cleveland, Ohio 44114-1190  
(216) 586-3939 (phone)  
(216) 579-0212 (fax)  
tfraelich@jonesday.com  
jwalworth@jonesday.com

Attorneys for Opposer  
ProMark Brands Inc.

**CERTIFICATE OF SERVICE**

A copy of the foregoing was served on this 1st day of September, 2009, via first-class  
mail upon counsel for Applicant:

Michelle A. Massicotte, Esq.  
NIXON PEABODY LLP  
100 Summer Street  
Boston, MA 02110-2106

/James W. Walworth, Jr./  
Attorney for Opposer



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TTABVUE. Trademark Trial and Appeal Board Inquiry System

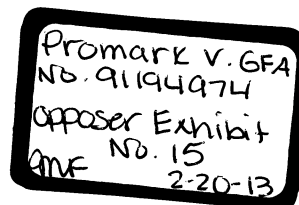
v1.5

**Opposition****Number:** 91191739**Filing Date:** 09/01/2009**Status:** Terminated**Status Date:** 05/28/2010**Interlocutory Attorney:** FRANCES S WOLFSON**Defendant****Name:** Shining Ocean, Inc.**Correspondence:** JAMES P. UHLIR  
CHRISTENSEN O'CONNOR JOHNSON KINDNESS PLLC  
1420 FIFTH AVENUE, SUITE 2800  
SEATTLE, WA 98101-2347  
UNITED STATES  
juhlir@cojk.com**Serial #:** 77464240Application File**Application Status:** Abandoned - After Inter-Partes Decision**Mark:** SMART SALMON**Plaintiff****Name:** ProMark Brands Inc.**Correspondence:** TIMOTHY P. FRAELICH  
JONES DAY  
901 LAKESIDE AVENUE  
CLEVELAND, OH 44114  
UNITED STATES  
jwalworth@jonesday.com, pcynghier@jonesday.com**Serial #:** 74528148Application File**Registration #:** 1911590**Application Status:** Renewed**Mark:** SMART ONES**Serial #:** 75415119Application File**Registration #:** 2204080**Application Status:** Renewed**Mark:** SMART ONES**Serial #:** 78352011Application File**Registration #:** 2916539**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** SMART ONES**Serial #:** 78351994Application File**Registration #:** 2916538**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** SMART ONES**Serial #:** 77368176Application File**Registration #:** 3462182**Application Status:** Registered**Mark:** SMART ONES**Prosecution History**

#	Date	History Text
9	05/28/2010	TERMINATED

**Due Date**

6/22/2011

<http://ttabvue.uspto.gov/ttabvue/v?pno=91191739&pty=OPP>

HEINZ 000381

8	05/28/2010	<u>BD'S DECISION: DISMISSED W/O PREJUDICE</u>	
7	05/13/2010	<u>WITHDRAWAL OF APPLICATION</u>	
6	04/07/2010	<u>SUSPENDED</u>	
5	04/07/2010	<u>STIP TO SUSPEND PEND SETTLEMENT NEGOTNS</u>	
4	10/07/2009	<u>ANSWER</u>	
3	09/01/2009	PENDING, INSTITUTED	
2	09/01/2009	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	10/11/2009
1	09/01/2009	<u>FILED AND FEE</u>	

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ESTTA Tracking number: **ESTTA303922**

Filing date: **09/01/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	ProMark Brands Inc.
Granted to Date of previous extension	09/12/2009
Address	2541 North Stokesberry PlaceSuite 100 Meridian, ID 83642 UNITED STATES
Attorney information	Timothy P. Fraelich JONES DAY 901 Lakeside Avenue Cleveland, OH 44114 UNITED STATES tfraclich@jonesday.com, jwalworth@jonesday.com, pcyingier@jonesday.com Phone:216 586 3939

**Applicant Information**

Application No	77464240	Publication date	07/14/2009
Opposition Filing Date	09/01/2009	Opposition Period Ends	09/12/2009
Applicant	Shining Ocean, Inc. 1515 Puyallup St. Sumner, WA 98390 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 029. All goods and services in the class are opposed, namely: frozen or refrigerated salmon fillet with sauce
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**Grounds for Opposition**


Priority and likelihood of confusion	Trademark Act section 2(d)
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**Marks Cited by Opposer as Basis for Opposition**


U.S. Registration No.	1911590	Application Date	05/20/1994
Registration Date	08/15/1995	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			


Description of Mark	NONE
Goods/Services	Class 029. First use: First Use: 1992/05/01 First Use In Commerce: 1992/05/01 frozen entrees consisting primarily of chicken, beef, fish and/or vegetables Class 030. First use: First Use: 1992/05/01 First Use In Commerce: 1992/05/01 frozen entrees consisting primarily of pasta and/or rice alone or in combination with other foods

U.S. Registration No.	2204080	Application Date	01/08/1998
Registration Date	11/17/1998	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/11/03 First Use In Commerce: 1997/11/03 Frozen desserts consisting of milk based or milk substitute based desserts, cakes, pies and mousses		

U.S. Registration No.	2916539	Application Date	01/14/2004
Registration Date	01/04/2005	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2001/04/01 First Use In Commerce: 2001/04/01 Pre-cooked ready-to-eat frozen bread or wrap having a meat and/or vegetable filling with or without cheese		

U.S. Registration No.	2916538	Application Date	01/14/2004
Registration Date	01/04/2005	Foreign Priority Date	NONE
Word Mark	SMART ONES		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 1997/11/30 First Use In Commerce: 1997/11/30 Pizza

U.S. Registration No.	3462182	Application Date	01/10/2008
Registration Date	07/08/2008	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/12/31 First Use In Commerce: 1997/12/31 Frozen foods, namely, breakfast sandwiches and muffins		

Attachments	78352011#TMSN.jpeg ( 1 page )( bytes ) 78351994#TMSN.jpeg ( 1 page )( bytes ) 77368176#TMSN.jpeg ( 1 page )( bytes ) DOC141.pdf ( 6 pages )(177902 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Timothy P. Fraelich/
Name	Timothy P. Fraelich

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Date	09/01/2009
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of

U.S. Trademark Application 77/464,240  
For the Mark **SMART SALMON**  
Published in the Official Gazette on July 14, 2009

PROMARK BRANDS INC.,

Opposer,

Opposition No. \_\_\_\_\_

v.

SHINING OCEAN, INC.,

Applicant.

Commissioner of Trademarks  
Box TTAB  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

**NOTICE OF OPPOSITION**

1. Opposer, ProMark Brands Inc. ("Opposer"), a corporation duly organized and existing under the laws of Idaho and having a place of business at 2541 North Stokesberry Place, Suite 100, Meridian, ID 83646, believes that it will be damaged by the registration of the mark SMART SALMON shown in trademark application Serial No. 77/464,240 (the "Application") and hereby opposes same pursuant to 15 U.S.C. §§ 1052 and 1063.

2. To the best of Opposer's knowledge, the name and address of the current owner of the Application is Shining Ocean, Inc. ("Applicant"), 1515 Puyallup Street., Sumner, WA 98390, United States.

As grounds for opposition, it is alleged that:

3. Applicant has filed the Application to register the mark SMART SALMON to identify "frozen or refrigerated salmon fillet with sauce."
4. The Application was published in the Official Gazette on July 14, 2009.
5. Opposer requested a 30-day extension of time to oppose the Application and Opposer's request was granted on August 11, 2009.
6. Applicant has not filed an amendment to allege use as of September 1, 2009.
7. Opposer is the owner of the following registrations in the United States Patent and Trademark Office for the SMART ONES marks ("Opposer's Marks"), which registrations have not been cancelled, are valid and in full force and effect:

<b>Trademark</b>	<b>Registration/ Serial No.</b>	<b>Registration/ Filing Date</b>	<b>International Class/Goods</b>
SMART ONES	1,911,590	August 15, 1995	29 – Frozen entrees consisting primarily of chicken, beef, fish and/or vegetables.
SMART ONES	2,204,080	November 17, 1998	30 – Frozen desserts consisting of milk based or milk substitute based desserts, cakes, pies and mousses.
SMART ONES	2,916,539	January 4, 2005	30 – Pre-cooked ready-to-eat frozen bread or wrap having a meat and/or vegetable filling with or without cheese.
SMART ONES	2,916,538	January 4, 2005	30 – Pizza.
SMART ONES	3,462,182	July 8, 2008	30 – Frozen foods, namely, breakfast sandwiches and muffins.

Registration Nos. 1,911,590 and 2,204,080 have become incontestable as a matter of law under 15 U.S.C. § 1065.

8. Opposer's ownership in Registration Nos. 1,911,590 and 2,204,080 results from the following chain of title:

<b>Assignment</b>	by Weight Watchers International, Inc. to H.J. Heinz Company (recorded at Reel 1971/Frame 0642);
<b>Assignment</b>	by H.J. Heinz Company to ProMark International, Inc. (recorded at Reel 2327/Frame 0405);
<b>Merger</b>	of ProMark International, Inc. with H.J. Heinz Company (recorded at Reel 2633/Frame 0413);
<b>Assignment</b>	by H.J. Heinz Company to ProMark Brands Inc. (recorded at Reel 2631/Frame 0678).

9. Opposer, through its predecessors and licensee, since at least as early as May 1, 1992, has been, and is now, using the mark SMART ONES throughout the United States in connection with the goods described above.

10. Opposer's use of Opposer's Marks, as described above, has been valid and continuous since the date of first use.

11. Opposer's continuous, exclusive and commercially-successful use of the mark SMART ONES is symbolic of extensive good will and consumer recognition built up by Opposer through substantial amounts of time, money and effort in manufacturing, advertising and promotion. As such, the mark SMART ONES has come to serve as a unique and famous identifier of Opposer's goods.

12. Upon information and belief, Applicant's SMART ONES mark is widely and highly recognized by the general, consuming public of the United States as a designation of source of Opposer's goods.

13. Opposer's use of the mark SMART ONES predates any alleged use by Applicant for Applicant's Mark.

14. Opposer's use of the mark SMART ONES predates the filing date of the Application.

15. Opposer's Marks were well established and famous long before the filing date of the Application and at the time that Applicant filed the Application.

16. Upon information and belief, Applicant's Mark SMART SALMON, to be used in connection with the goods covered by Application No. 77/464,240, is confusingly similar to Opposer's Marks as used and registered by Opposer.

17. Upon information and belief, the products to which Applicant's Mark will be used are closely related to, or identical to, various products on and in connection with which Opposer and its predecessors-in-interest have used, and are using, the mark SMART ONES.

18. Upon information and belief, the goods to which Applicant's Mark SMART SALMON will be applied, and the products on and in connection with which Opposer uses its mark SMART ONES, are products that are: (1) offered for sale and sold in the same channels of trade and offered for sale, and (2) sold to the same class of purchasers.

### **COUNT I**

### **LIKELIHOOD OF CONFUSION**

19. ProMark incorporates each and every allegation of Paragraphs 1-18 of this Notice as though fully set forth herein.

20. In view of the similarity of the respective marks, similarity of the channels of trade and the related nature of the goods offered for sale by the respective parties, it is alleged that Applicant's Mark SMART SALMON so resembles Opposer's Marks, previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake or to deceive as to source by suggesting that Applicant's goods are associated with or approved, endorsed, affiliated, authorized or sponsored by Opposer.



**COUNT II**  
**TRADEMARK DILUTION**

21. ProMark incorporates each and every allegation of Paragraphs 1-20 of this Notice as though fully set forth herein.

22. SMART ONES has become famous in accordance with the standard set forth in 15 U.S.C. § 1125(c).

23. Applicant filed the Application for SMART SALMON after Opposer's SMART ONES mark became famous.

24. Applicant's Mark is likely to cause the dilution of the distinctiveness of the Opposer's famous SMART ONES mark.

WHEREFORE, Opposer prays that Application Serial No. 77/464,240 be rejected on the basis of: (1) likelihood of confusion and (2) likelihood of dilution; and that no registration be issued thereon to Applicant and that this Opposition be sustained in favor of Opposer.

Dated this 1st day of September, 2009.

Respectfully submitted,

By: James W. Walworth, Jr./  
Timothy P. Fraelich  
James W. Walworth, Jr.  
JONES DAY  
901 Lakeside Avenue  
Cleveland, Ohio 44114-1190  
(216) 586-3939 (phone)  
(216) 579-0212 (fax)  
tfraelich@jonesday.com  
jwalworth@jonesday.com

Attorneys for Opposer  
ProMark Brands Inc.

**CERTIFICATE OF SERVICE**

A copy of the foregoing was served on this 1st day of September, 2009, via first-class  
mail upon Applicant:

Shining Ocean, Inc.  
Shining Ocean, Inc.  
1515 PUYALLUP Street  
Sumner, WA 98390-2234

/James W. Walworth, Jr./  
Attorney for Opposer



United States Patent and Trademark Office

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**Opposition****Number:** 91191494**Filing Date:** 08/13/2009**Status:** Terminated**Status Date:** 12/02/2009**Interlocutory Attorney:** CHERYL S GOODMAN**Defendant****Name:** ConAgra Foods RDM, Inc.**Correspondence:** Christopher M. BikusHusch Blackwell Sanders LLP  
1620 Dodge Street, Suite 2100  
Omaha, NE 68102-1504  
UNITED STATES  
pto-om@huschblackwell.com**Serial #:** 77607778Application File**Application Status:** Abandoned - After Inter-Partes Decision**Mark:** SMART BREAKFAST**Plaintiff****Name:** ProMark Brands Inc.**Correspondence:** Timothy P. FraelichJONES DAY  
901 Lakeside Avenue  
Cleveland, OH 44114  
UNITED STATES  
tfraclich@jonesday.com, jwalworth@jonesday.com,  
pcyngier@jonesday.com**Serial #:** 74528148Application File**Registration #:** 1911590**Application Status:** Renewed**Mark:** SMART ONES**Serial #:** 75415119Application File**Registration #:** 2204080**Application Status:** Renewed**Mark:** SMART ONES**Serial #:** 78352011Application File**Registration #:** 2916539**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** SMART ONES**Serial #:** 78351994Application File**Registration #:** 2916538**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** SMART ONES**Serial #:** 77368176Application File**Registration #:** 3462182**Application Status:** Registered**Mark:** SMART ONES**Prosecution History**

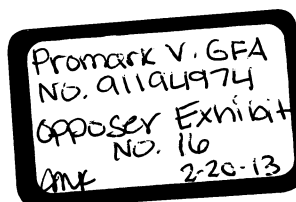
# Date

History Text

Due Date

<http://ttabvue.uspto.gov/ttabvue/v?pno=91191494&pty=OPP>

6/22/2011



HEINZ 000352

7	12/02/2009	TERMINATED	
6	12/02/2009	<u>BD'S DECISION: DISMISSED W/O PREJUDICE</u>	
5	12/02/2009	<u>WITHDRAWAL OF APPLICATION</u>	
4	09/22/2009	<u>ANSWER</u>	
3	08/13/2009	PENDING, INSTITUTED	
2	08/13/2009	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	09/22/2009
1	08/13/2009	<u>FILED AND FEE</u>	

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ESTTA Tracking number: **ESTTA300684**

Filing date: **08/13/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	ProMark Brands Inc.		
Entity	Corporation	Citizenship	Idaho
Address	2541 North Stokesberry Place Suite 100 Meridian, ID 83642 UNITED STATES		

Attorney information	Timothy P. Fraelich JONES DAY 901 Lakeside Avenue Cleveland, OH 44114 UNITED STATES tfraelich@jonesday.com, jwalworth@jonesday.com, pcyngier@jonesday.com Phone: 216 586 3939
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**Applicant Information**

Application No	77607778	Publication date	07/14/2009
Opposition Filing Date	08/13/2009	Opposition Period Ends	08/13/2009
Applicant	ConAgra Foods RDM, Inc. One ConAgra Drive Omaha, NE 68102 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 030. All goods and services in the class are opposed, namely: english muffin sandwiches, bagel sandwiches, croissant sandwiches, breakfast pizza, breakfast burritos, breakfast wraps, muffins, cinnamon rolls and bakery goods
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**Grounds for Opposition**


Priority and likelihood of confusion	Trademark Act section 2(d)
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**Marks Cited by Opposer as Basis for Opposition**


U.S. Registration No.	1911590	Application Date	05/20/1994
Registration Date	08/15/1995	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of	NONE		


Mark	
Goods/Services	Class 029. First use: First Use: 1992/05/01 First Use In Commerce: 1992/05/01 frozen entrees consisting primarily of chicken, beef, fish and/or vegetables Class 030. First use: First Use: 1992/05/01 First Use In Commerce: 1992/05/01 frozen entrees consisting primarily of pasta and/or rice alone or in combination with other foods

U.S. Registration No.	2204080	Application Date	01/08/1998
Registration Date	11/17/1998	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/11/03 First Use In Commerce: 1997/11/03 Frozen desserts consisting of milk based or milk substitute based desserts, cakes, pies and mousses		

U.S. Registration No.	2916539	Application Date	01/14/2004
Registration Date	01/04/2005	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2001/04/01 First Use In Commerce: 2001/04/01 Pre-cooked ready-to-eat frozen bread or wrap having a meat and/or vegetable filling with or without cheese		

U.S. Registration No.	2916538	Application Date	01/14/2004
Registration Date	01/04/2005	Foreign Priority Date	NONE
Word Mark	SMART ONES		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 1997/11/30 First Use In Commerce: 1997/11/30 Pizza

U.S. Registration No.	3462182	Application Date	01/10/2008
Registration Date	07/08/2008	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/12/31 First Use In Commerce: 1997/12/31 Frozen foods, namely, breakfast sandwiches and muffins		

Attachments	78352011#TMSN.jpeg ( 1 page )( bytes ) 78351994#TMSN.jpeg ( 1 page )( bytes ) 77368176#TMSN.jpeg ( 1 page )( bytes ) DOC167.pdf ( 7 pages )(180317 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Timothy P. Fraelich/
Name	Timothy P. Fraelich

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Date	08/13/2009
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of

U.S. Trademark Application 77/607,778  
For the Mark **SMART BREAKFAST**  
Published in the Official Gazette on July 14, 2009

PROMARK BRANDS INC.,

Opposer,

Opposition No.

v.

CONAGRA FOODS RDM, INC.,

Applicant.

Commissioner of Trademarks  
Box TTAB  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

**NOTICE OF OPPOSITION**

1. Opposer, ProMark Brands Inc. ("Opposer"), a corporation duly organized and existing under the laws of Idaho and having a place of business at 2541 North Stokesberry Place, Suite 100, Meridian, Idaho 83646, believes that it will be damaged by the registration of Application Serial No. 77/607,778 for the mark SMART BREAKFAST (the "Application") and hereby opposes same pursuant to 15 U.S.C. §§ 1052 and 1063.

2. To the best of Opposer's knowledge, the name and address of the current owner of the Application is ConAgra Foods RDM, Inc. ("Applicant"), One ConAgra Drive, Omaha, NE 68102.

As grounds for opposition, it is alleged that:

3. Applicant filed an intent to use application on November 5, 2008, to register the mark SMART BREAKFAST ("Applicant's Mark") for use in connection with "english muffin sandwiches, bagel sandwiches, croissant sandwiches, breakfast pizza, breakfast burritos, breakfast wraps, muffins, cinnamon rolls and bakery goods" in International Class 30.

4. On May 27, 2009, Applicant files a Response to Office Action in which it disclaimed the word "BREAKFAST."

5. Applicant has not filed an amendment to allege use as of August 13, 2009.

6. Opposer is the owner of the following registrations in the United States Patent and Trademark Office for the SMART ONES marks ("Opposer's Marks"), which registrations have not been cancelled, are valid and in full force and effect:

<b>Trademark</b>	<b>Registration/ Serial No.</b>	<b>Registration/ Filing Date</b>	<b>International Class/Goods</b>
SMART ONES	1,911,590	August 15, 1995	29 – Frozen entrees consisting primarily of chicken, beef, fish and/or vegetables.
SMART ONES	2,204,080	November 17, 1998	30 – Frozen desserts consisting of milk based or milk substitute based desserts, cakes, pies and mousses.

SMART ONES	2,916,539	January 4, 2005	30 – Pre-cooked ready-to-eat frozen bread or wrap having a meat and/or vegetable filling with or without cheese.
SMART ONES	2,916,538	January 4, 2005	30 – Pizza.
SMART ONES	3,462,182	July, 8, 2008	30 – Frozen foods, namely, breakfast sandwiches and muffins.

Registration Nos. 1,911,590 and 2,204,080 have become incontestable as a matter of law under 15 U.S.C. § 1065.

7. Opposer's ownership in Registration Nos. 1,911,590 and 2,204,080 results from the following chain of title:

<b>Assignment</b>	by Weight Watchers International, Inc. to H.J. Heinz Company (recorded at reel 1971/Frame 0642);
<b>Assignment</b>	by H.J. Heinz Company to ProMark International, Inc. (recorded at Reel 2327/Frame 0405);
<b>Merger</b>	of ProMark International, Inc. with H.J. Heinz Company (recorded at Reel 2633/Frame 0413);
<b>Assignment</b>	by H.J. Heinz Company to ProMark Brands, Inc. (recorded at Reel 2631/Frame 0678).

8. Opposer, through its predecessors and licensee, since at least as early as May 1, 1992, has been, and is now, using the mark SMART ONES throughout the United States in connection with the goods described above.

9. Opposer's use of Opposer's Marks, as described above, has been valid and continuous since the date of first use.

10. Opposer's continuous, exclusive and commercially successful use of the mark SMART ONES is symbolic of extensive good will and consumer recognition built up by Opposer through substantial amounts of time, money and effort in manufacturing, advertising

and promotion. As such, the mark SMART ONES has come to serve as a unique and famous identifier of Opposer's goods.

11. Upon information and belief, Applicant's SMART ONES mark is widely and highly recognized by the general consuming public of the United States as a designation of source of Opposer's goods.

12. Opposer's use of the mark SMART ONES predates any alleged use by Applicant for Applicant's Mark.

13. Opposer's use of the mark SMART ONES predates the filing date of the Application.

14. Opposer's Marks were well established and famous long before the filing date of the Application and at the time that Applicant filed the Application.

15. Upon information and belief, Applicant's Mark SMART BREAKFAST, to be used in connection with the goods covered by Application No. 77/607,778, is confusingly similar to Opposer's Marks as used and registered by Opposer.

16. Upon information and belief, the products to which Applicant's Mark will be used are closely related to, or identical to, various products on and in connection with which Opposer and its predecessors-in-interest have used, and are using, the mark SMART ONES.

17. Upon information and belief, the goods to which Applicant's Mark SMART BREAKFAST will be applied, and the products on and in connection with which Opposer uses its mark SMART ONES, are products that are offered for sale and sold in the same channels of trade and offered for sale and sold to the same class of purchasers.

**COUNT I**  
**LIKELIHOOD OF CONFUSION**

18. ProMark incorporates each and every allegation of Paragraphs 1-17 of this Notice as though fully set forth herein.

19. In view of the similarity of the respective marks, similarity of the channels of trade and the related nature of the goods offered for sale by the respective parties, it is alleged that Applicant's Mark SMART BREAKFAST so resembles Opposer's Marks, previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake, or to deceive as to source by suggesting that Applicant's goods are associated with or approved, endorsed, affiliated, authorized or sponsored by Opposer.

**COUNT II**  
**TRADEMARK DILUTION**

20. ProMark incorporates each and every allegation of Paragraphs 1-19 of this Notice as though fully set forth herein.

21. SMART ONES has become famous in accordance with the standard set forth in 15 U.S.C. § 1125(c)(1).

22. Applicant filed the Application for SMART BREAKFAST after Opposer's SMART ONES mark became famous.

23. Applicant's Mark is likely to cause the dilution of the distinctiveness of the Opposer's famous SMART ONES mark.

WHEREFORE, Opposer prays that Application Serial No. 77/607,778 be rejected on the basis of (1) likelihood of confusion and (2) likelihood of dilution, and that no registration be issued thereon to Applicant and that this Opposition be sustained in favor of Opposer.

Dated this 13th day of August, 2009.

Respectfully submitted,

By: /s/James W. Walworth, Jr.

Timothy P. Fraelich  
James W. Walworth, Jr.  
JONES DAY  
901 Lakeside Avenue  
Cleveland, Ohio 44114-1190  
(216) 586-3939 (phone)  
(216) 579-0212 (fax)  
tfraclich@jonesday.com  
jwalworth@jonesday.com

Attorneys for Opposer  
ProMark Brands Inc.

**CERTIFICATE OF SERVICE**

A copy of the foregoing was served on this 13th day of August, 2009, via first-class mail  
upon Counsel for Applicant:

Christopher M. Bikus  
Husch Blackwell Sanders LLP  
Suite 2100  
1620 Dodge Street  
Omaha NE 68102

/s/James W. Walworth, Jr.  
Attorney for Opposer



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TTABVUE. Trademark Trial and Appeal Board Inquiry System

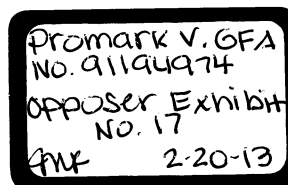
v1.5

**Opposition****Number:** 91189852**Filing Date:** 04/22/2009**Status:** Terminated**Status Date:** 10/02/2009**Interlocutory Attorney:** LINDA M SKORO**Defendant****Name:** Redi-Quick, L.L.C.**Correspondence:** Gerald H KlossnerRedi-Quick, L.L.C.  
2932 KASSARINE PASS  
AUSTIN, TX 78704-4655  
UNITED STATES  
gklossner@austln.rr.com**Serial #:** 78823100[Application File](#)**Application Status:** Abandoned - No Statement Of Use Filed**Mark:** SMART BURRITO**Plaintiff****Name:** ProMark Brands, Inc.**Correspondence:** Timothy P. FraelichJONES DAY  
901 Lakeside Avenue  
Cleveland, OH 44114  
UNITED STATES  
tfraelich@jonesday.com, crdickson@jonesday.com,  
pcyngier@jonesday.com**Serial #:** 74528148[Application File](#)**Registration #:** 1911590**Application Status:** Renewed**Mark:** SMART ONES**Serial #:** 75415119[Application File](#)**Registration #:** 2204080**Application Status:** Renewed**Mark:** SMART ONES**Serial #:** 78352011[Application File](#)**Registration #:** 2916539**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** SMART ONES**Serial #:** 78351994[Application File](#)**Registration #:** 2916538**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** SMART ONES**Serial #:** 77368176[Application File](#)**Registration #:** 3462182**Application Status:** Registered**Mark:** SMART ONES**Prosecution History**

# Date

History Text

Due Date

<http://ttabvue.uspto.gov/ttabvue/v?pno=91189852&pty=OPP>

6/22/2011

HEINZ 000300



9	10/02/2009	TERMINATED	
8	10/02/2009	<u>BD'S DECISION: DISMISSED W/ PREJUDICE</u>	
7	09/30/2009	<u>WITHDRAWAL OF OPPOSITION</u>	
6	09/25/2009	<u>RESPONSE DUE 30 DAYS (DUE DATE)</u>	10/25/2009
5	09/18/2009	<u>DEFENDANT'S MOTION</u>	
4	06/01/2009	<u>ANSWER</u>	
3	04/22/2009	PENDING, INSTITUTED	
2	04/22/2009	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	06/01/2009
1	04/22/2009	<u>FILED AND FEE</u>	

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ESTTA Tracking number: **ESTTA279525**

Filing date: **04/22/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	ProMark Brands, Inc.		
Entity	Corporation	Citizenship	Idaho
Address	2541 North Stokesberry Place Suite 100 Meridian, ID 83642 UNITED STATES		
Attorney information	Timothy P. Fraelich JONES DAY 901 Lakeside Avenue Cleveland, OH 44114 UNITED STATES tfraelich@jonesday.com, crdickson@jonesday.com, pcyn gier@jonesday.com Phone:216 586 3939		

**Applicant Information**

Application No	78823100	Publication date	03/24/2009
Opposition Filing Date	04/22/2009	Opposition Period Ends	04/23/2009
Applicant	Redi-Quick, L.L.C. 2932 Kassarine Pass Austin, TX 78704 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 030. All goods and services in the class are opposed, namely: Burritos
---------------------------------------------------------------------------------

**Grounds for Opposition**


Priority and likelihood of confusion	Trademark Act section 2(d)
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**Marks Cited by Opposer as Basis for Opposition**


U.S. Registration No.	1911590	Application Date	05/20/1994
Registration Date	08/15/1995	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		


Goods/Services	Class 029. First use: First Use: 1992/05/01 First Use In Commerce: 1992/05/01 frozen entrees consisting primarily of chicken, beef, fish and/or vegetables Class 030. First use: First Use: 1992/05/01 First Use In Commerce: 1992/05/01 frozen entrees consisting primarily of pasta and/or rice alone or in combination with other foods
----------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

U.S. Registration No.	2204080	Application Date	01/08/1998
Registration Date	11/17/1998	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/11/03 First Use In Commerce: 1997/11/03 Frozen desserts consisting of milk based or milk substitute based desserts, cakes, pies and mousses		

U.S. Registration No.	2916539	Application Date	01/14/2004
Registration Date	01/04/2005	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2001/04/01 First Use In Commerce: 2001/04/01 Pre-cooked ready-to-eat frozen bread or wrap having a meat and/or vegetable filling with or without cheese		

U.S. Registration No.	2916538	Application Date	01/14/2004
Registration Date	01/04/2005	Foreign Priority Date	NONE
Word Mark	SMART ONES		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 1997/11/30 First Use In Commerce: 1997/11/30 Pizza

U.S. Registration No.	3462182	Application Date	01/10/2008
Registration Date	07/08/2008	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/12/31 First Use In Commerce: 1997/12/31 Frozen foods, namely, breakfast sandwiches and muffins		

Attachments	78352011#TMSN.jpeg ( 1 page )( bytes ) 78351994#TMSN.jpeg ( 1 page )( bytes ) 77368176#TMSN.jpeg ( 1 page )( bytes ) DOC277.pdf ( 6 pages )(149934 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Timothy P. Fraelich/
Name	Timothy P. Fraelich

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Date	04/22/2009
------	------------

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of

U.S. Trademark Application 78/823,100  
For the Mark **SMART BURRITO**  
Published in the Official Gazette on March 24, 2009

PROMARK BRANDS INC.,

Opposer,

Opposition No. \_\_\_\_\_

v.

REDI-QUICK, L.L.C.,

Applicant.

**NOTICE OF OPPOSITION**

1. Opposer, ProMark Brands Inc. ("Opposer"), a corporation duly organized and existing under the laws of Idaho and having a place of business at 2541 North Stokesberry Place, Suite 100, Meridian, Idaho 83646, believes that it will be damaged by the registration of Application Serial No. 78/823,100 for the mark SMART BURRITO (the "Application") and hereby opposes same pursuant to 15 U.S.C. §§ 1052 and 1063.

2. To the best of Opposer's knowledge, the name and address of the current owner of the Application is REDI-QUICK, L.L.C. ("Applicant"), 2932 Kassarine Pass, Austin, Texas 78704.

As grounds for opposition, it is alleged that:

3. Applicant filed an intent to use application on February 24, 2006, to register the mark SMART BURRITO ("Applicant's Mark") for use in connection with "burritos" in international Class 30.

4. Opposer is the owner of the following registrations and applications in the United States Patent and Trademark Office for the SMART ONES marks ("Opposer's Marks"), which registrations have not been cancelled, are valid and in full force and effect:

Trademark	Registration/ Serial No.	Registration/ Filing Date	International Class/Goods
SMART ONES	1,911,590	August 15, 1995	29 – Frozen entrees consisting primarily of chicken, beef, fish and/or vegetables.
SMART ONES	2,204,080	November 17, 1998	30 – Frozen desserts consisting of milk based or milk substitute based desserts, cakes, pies and mousses.
SMART ONES	2,916,539	January 4, 2005	30 – Pre-cooked ready-to-eat frozen bread or wrap having a meat and/or vegetable filling with or without cheese.
SMART ONES	2,916,538	January 4, 2005	30 – Pizza.
SMART ONES	3,462,182	July, 8, 2008	30 – Frozen foods, namely, breakfast sandwiches and muffins.

Registration Nos. 1,911,590 and 2,204,080 have become incontestable as a matter of law under 15 U.S.C. § 1065.

5. Opposer's ownership in Registration Nos. 1,911,590 and 2,204,080 results from the following chain of title:

<b>Assignment</b>	by Weight Watchers International, Inc. to H.J. Heinz Company (recorded at reel 1971/Frame 0642);
-------------------	-----------------------------------------------------------------------------------------------------

<b>Assignment</b>	by H.J. Heinz Company to ProMark International, Inc. (recorded at Reel 2327/Frame 0405);
<b>Merger</b>	of ProMark International, Inc. with H.J. Heinz Company (recorded at Reel 2633/Frame 0413);
<b>Assignment</b>	by H.J. Heinz Company to ProMark Brands Inc. (recorded at Reel 2631/Frame 0678).

6. Opposer, through its predecessors and licensee, since at least as early as May 1, 1992, has been, and is now, using the mark SMART ONES throughout the United States in connection with the goods described above.

7. Opposer's use of Opposer's Marks, as described above, has been valid and continuous since the date of first use.

8. Opposer's continuous and commercially-successful use of the mark SMART ONES is symbolic of extensive good will and consumer recognition built up by Opposer through substantial amounts of time and effort in manufacturing, advertising and promotion. As such, the mark SMART ONES has come to serve as a unique identifier of Opposer's goods and has become famous.

9. Opposer's use of the mark SMART ONES predates any alleged use date by Applicant for Applicant's Mark.

10. Opposer's use of the mark SMART ONES predates the filing date of the Application.

11. Opposer's Marks were well established and famous long before the filing date of the Application and at the time that Applicant filed the Application.

12. Upon information and belief, Applicant's Mark, to be used in connection with the goods covered by the Application, is confusingly similar to Opposer's Marks as used by Opposer.



13. Upon information and belief, the products to which Applicant's Mark will be used are closely related to, or identical to, various products on and in connection with which Opposer and its predecessors-in-interest have used and are using the mark SMART ONES.

14. Upon information and belief, the goods to which Applicant's Mark will be applied, and the products on and in connection with which Opposer uses its mark SMART ONES, are products that are offered for sale and sold in the same channels of trade and offered for sale and sold to the same class of purchasers.

15. In view of the similarity of the respective marks, similarity of the channels of trade and the related nature of the goods offered for sale by the respective parties, it is alleged that Applicant's Mark so resembles Opposer's Marks, previously used and registered in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake, or to deceive as to source by suggesting that Applicant's goods are associated with or approved, endorsed, affiliated, authorized or sponsored by Opposer.

WHEREFORE, Opposer prays that Application Serial No. 78/823,100 be rejected, that no registration be issued thereon to Applicant and that this Opposition be sustained in favor of Opposer.

Dated this 22nd day of April, 2009

Respectfully, submitted,

By: /Cecilia R. Dickson/  
Timothy P. Fraelich  
JONES DAY  
901 Lakeside Avenue  
Cleveland, Ohio 44114-1190  
Telephone: (216) 586-3939  
Facsimile: (216) 579-0212  
tfraelich@jonesday.com

Cecilia R. Dickson  
JONES DAY  
500 Grant Street, Suite 4500  
Pittsburgh, Pennsylvania 15219-2514  
Telephone: (412) 391-3939  
Facsimile: (412) 394-7959  
crdickson@jonesday.com

Attorneys for Opposer  
ProMark Brands Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing, **NOTICE OF OPPOSITION**, was served  
on Applicant via First Class Mail in an envelope addressed to:

Redi-Quick, L.L.C.  
2932 Kassarine Pass  
Austin, TX 78704  
*Applicant*

Dated this 22nd day of April, 2009

/Cecilia R. Dickson/  
Cecilia R. Dickson



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## TTABVUE. Trademark Trial and Appeal Board Inquiry System

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## Opposition

**Number:** 91188379**Filing Date:** 01/13/2009**Status:** Terminated**Status Date:** 02/23/2010**Interlocutory Attorney:** ROBERT COGGINS

## Defendant

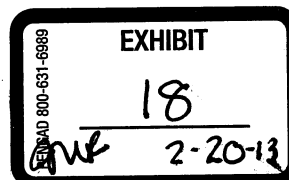
**Name:** Rich Products Corporation**Correspondence:** Ellen S. SimpsonSimpson & Simpson, PLLC  
5555 Main Street  
Williamsville, NY 14221-5430  
UNITED STATES  
esimpson@idealawyers.com**Serial #:** 77511427[Application File](#)**Application Status:** Abandoned - After Inter-Partes Decision**Mark:** SMARTER CHOICES

## Plaintiff

**Name:** ProMark Brands Inc.**Correspondence:** Timothy P. FraellichJones Day  
North Point, 901 Lakeside Avenue  
Cleveland, OH 44114  
UNITED STATES  
jwalworth@JonesDay.com**Serial #:** 74528148[Application File](#)**Registration #:** 1911590**Application Status:** Renewed**Mark:** SMART ONES**Serial #:** 75415119[Application File](#)**Registration #:** 2204080**Application Status:** Renewed**Mark:** SMART ONES**Serial #:** 78352011[Application File](#)**Registration #:** 2916539**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** SMART ONES**Serial #:** 78351994[Application File](#)**Registration #:** 2916538**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** SMART ONES**Serial #:** 77315485[Application File](#)**Application Status:** Abandoned - No Statement Of Use Filed**Mark:** SMART ONES

## Prosecution History

#	Date	History Text
15	02/23/2010	TERMINATED

**Due Date**<http://ttabvue.uspto.gov/ttabvue/v?pno=91188379&pty=OPP>

6/22/2011

HEINZ 000261

<u>14</u>	02/23/2010	<u>BD'S DECISION: DISMISSED W/ PREJUDICE</u>	
<u>13</u>	02/17/2010	<u>WITHDRAWAL OF OPPOSITION</u>	
<u>12</u>	02/11/2010	<u>PL ALLOWED 20 DAYS RESPOND</u>	
<u>11</u>	01/29/2010	<u>WITHDRAWAL OF APPLICATION</u>	
<u>10</u>	10/30/2009	<u>SUSPENDED</u>	
<u>9</u>	10/30/2009	<u>STIP TO SUSPEND PEND SETTLEMENT NEGOTNS</u>	
<u>8</u>	10/01/2009	<u>SUSPENDED</u>	
<u>7</u>	10/01/2009	<u>STIP TO SUSPEND PEND SETTLEMENT NEGOTNS</u>	
<u>6</u>	07/17/2009	<u>SUSPENDED</u>	
<u>5</u>	07/17/2009	<u>STIP TO SUSPEND PEND SETTLEMENT NEGOTNS</u>	
<u>4</u>	02/13/2009	<u>ANSWER</u>	
<u>3</u>	01/13/2009	<u>PENDING, INSTITUTED</u>	
<u>2</u>	01/13/2009	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	02/22/2009
<u>1</u>	01/13/2009	<u>FILED AND FEE</u>	

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ESTTA Tracking number: **ESTTA260217**

Filing date: **01/13/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	ProMark Brands Inc.
Granted to Date of previous extension	01/17/2009
Address	2541 North Stokesberry Place, Suite 100 Meridian, ID 83646 UNITED STATES
Attorney information	Timothy P. Fraelich JONES DAY 901 Lakeside Avenue Cleveland, OH 44114 UNITED STATES tfraclich@jonesday.com, jwalworth@jonesday.com, pcyingier@jonesday.com Phone:216 586 1247

**Applicant Information**

Application No	77511427	Publication date	11/18/2008
Opposition Filing Date	01/13/2009	Opposition Period Ends	01/17/2009
Applicant	Rich Products Corporation One Robert Rich Way Buffalo, NY 14213 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 029. All goods and services in the class are opposed, namely: Prepared frozen or refrigerated entrees consisting primarily of shrimp and seafood; frozen or refrigerated shrimp and seafood
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**Grounds for Opposition**


Priority and likelihood of confusion	Trademark Act section 2(d)
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**Marks Cited by Opposer as Basis for Opposition**


U.S. Registration No.	1911590	Application Date	05/20/1994
Registration Date	08/15/1995	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			


Description of Mark	NONE
Goods/Services	Class 029. First use: First Use: 1992/05/01 First Use In Commerce: 1992/05/01 frozen entrees consisting primarily of chicken, beef, fish and/or vegetables Class 030. First use: First Use: 1992/05/01 First Use In Commerce: 1992/05/01 frozen entrees consisting primarily of pasta and/or rice alone or in combination with other foods

U.S. Registration No.	2204080	Application Date	01/08/1998
Registration Date	11/17/1998	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/11/03 First Use In Commerce: 1997/11/03 Frozen desserts consisting of milk based or milk substitute based desserts, cakes, pies and mousses		

U.S. Registration No.	2916539	Application Date	01/14/2004
Registration Date	01/04/2005	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2001/04/01 First Use In Commerce: 2001/04/01 Pre-cooked ready-to-eat frozen bread or wrap having a meat and/or vegetable filling with or without cheese		

U.S. Registration No.	2916538	Application Date	01/14/2004
Registration Date	01/04/2005	Foreign Priority Date	NONE
Word Mark	SMART ONES		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 1997/11/30 First Use In Commerce: 1997/11/30 Pizza

U.S. Application No.	77315485	Application Date	10/29/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: Muffins		

Attachments	78352011#TMSN.jpeg ( 1 page )( bytes ) 78351994#TMSN.jpeg ( 1 page )( bytes ) 77315485#TMSN.jpeg ( 1 page )( bytes ) DOC223.pdf ( 6 pages )(154578 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Timothy P. Fraelich/
Name	Timothy P. Fraelich



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Date	01/13/2009
------	------------

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of

U.S. Trademark Application 77/511,427  
For the Mark **SMARTER CHOICES**  
Published in the Official Gazette on November 18, 2008

PROMARK BRANDS INC.,

Opposer,

Opposition No. \_\_\_\_\_

v.

RICH PRODUCTS CORPORATION,

Applicant.

Commissioner of Trademarks  
Box TTAB  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

**NOTICE OF OPPOSITION**

1. Opposer, ProMark Brands Inc. ("Opposer"), a corporation duly organized and existing under the laws of Idaho and having a place of business at 2541 North Stokesberry Place, Suite 100, Meridian, Idaho 83646, believes that it will be damaged by the registration of Application Serial No. 77/511,427 for the mark SMARTER CHOICES (the "Application") and hereby opposes same pursuant to 15 U.S.C. §§ 1052 and 1063.

2. To the best of Opposer's knowledge, the name and address of the current owner of the Application is Rich Products Corporation ("Applicant"), One Robert Rich Way, Buffalo, New York 14213.

As grounds for opposition, it is alleged that:

3. Applicant filed an intent to use application on June 30, 2008, to register the mark SMARTER CHOICES ("Applicant's Mark") for use in connection with "prepared frozen or refrigerated entrees consisting primarily of shrimp and seafood; frozen or refrigerated shrimp and seafood" in international Class 29.

4. Opposer is the owner of the following registrations and applications in the United States Patent and Trademark Office for the SMART ONES marks ("Opposer's Marks"), which registrations have not been cancelled, are valid and in full force and effect:

<b>Trademark</b>	<b>Registration/ Serial No.</b>	<b>Registration/ Filing Date</b>	<b>International Class/Goods</b>
SMART ONES	1,911,590	August 15, 1995	29 – Frozen entrees consisting primarily of chicken, beef, fish and/or vegetables.
SMART ONES	2,204,080	November 17, 1998	30 – Frozen desserts consisting of milk based or milk substitute based desserts, cakes, pies and mousses.
SMART ONES	2,916,539	January 4, 2005	30 – Pre-cooked ready-to-eat frozen bread or wrap having a meat and/or vegetable filling with or without cheese.
SMART ONES	2,916,538	January 4, 2005	30 – Pizza.
SMART ONES	3,462,182	July, 8, 2008	30 – Frozen foods, namely, breakfast sandwiches and muffins.
SMART ONES	77/315,485	October 29, 2007	30 – Muffins.

Registration Nos. 1,911,590 and 2,204,080 have become incontestable as a matter of law under 15 U.S.C. § 1065.

5. Opposer's ownership in Registration Nos. 1,911,590 and 2,204,080 results from the following chain of title:

<b>Assignment</b>	by Weight Watchers International, Inc. to H.J. Heinz Company (recorded at reel 1971/Frame 0642);
<b>Assignment</b>	by H.J. Heinz Company to ProMark International, Inc. (recorded at Reel 2327/Frame 0405);
<b>Merger</b>	of ProMark International, Inc. with H.J. Heinz Company (recorded at Reel 2633/Frame 0413);
<b>Assignment</b>	by H.J. Heinz Company to ProMark Brands Inc. (recorded at Reel 2631/Frame 0678).

6. Opposer, through its predecessors and licensee, since at least as early as May 1, 1992, has been, and is now, using the mark SMART ONES throughout the United States in connection with the goods described above.

7. Opposer's use of Opposer's Marks, as described above, has been valid and continuous since the date of first use.

8. Opposer's continuous and commercially-successful use of the mark SMART ONES is symbolic of extensive good will and consumer recognition built up by Opposer through substantial amounts of time and effort in manufacturing, advertising and promotion. As such, the mark SMART ONES has come to serve as a unique identifier of Opposer's goods and has become famous.

9. Opposer's use of the mark SMART ONES predates any alleged use date by Applicant for Applicant's Mark.

10. Opposer's use of the mark SMART ONES predates the filing date of the Application.

11. Opposer's Marks were well established and famous long before the filing date of the Application and at the time that Applicant filed the Application.

12. Upon information and belief, Applicant's Mark, to be used in connection with the goods covered by the Application, is confusingly similar to Opposer's Marks as used by Opposer.

13. Upon information and belief, the products to which Applicant's Mark will be used are closely related to, or identical to, various products on and in connection with which Opposer and its predecessors-in-interest have used and are using the mark SMART ONES.

14. Upon information and belief, the goods to which Applicant's Mark will be applied, and the products on and in connection with which Opposer uses its mark SMART ONES, are products that are offered for sale and sold in the same channels of trade and offered for sale and sold to the same class of purchasers.

15. In view of the similarity of the respective marks, similarity of the channels of trade and the related nature of the goods offered for sale by the respective parties, it is alleged that Applicant's Mark so resembles Opposer's Marks, previously used and registered in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake, or to deceive as to source by suggesting that Applicant's goods are associated with or approved, endorsed, affiliated, authorized or sponsored by Opposer.

WHEREFORE, Opposer prays that Application Serial No. 77/511,427 be rejected, that no registration be issued thereon to Applicant and that this Opposition be sustained in favor of Opposer.

Dated this 13th day of January, 2009

Respectfully, submitted,

By: /James W. Walworth Jr./

Timothy P. Fraelich  
James W. Walworth Jr.  
JONES DAY  
901 Lakeside Avenue  
Cleveland, Ohio 44114-1190  
Telephone: (216) 586-3939  
Facsimile: (216) 579-0212  
tfraclich@jonesday.com  
jwalworth@jonesday.com

Attorneys for Opposer  
ProMark Brands Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing, **NOTICE OF OPPOSITION**, was served on Applicant by depositing it with the United States Postal Service as express mail in an envelope addressed to:

Ellen S. Simpson  
Simpson & Simpson, PLLC  
5555 Main Street  
Williamsville, NY 14221-5430  
Telephone: (716) 626-1564  
Facsimile: (716) 626-0366

Dated this 13<sup>th</sup> day of January, 2009

/James W. Walworth Jr./  
James W. Walworth Jr.



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## TTABVUE. Trademark Trial and Appeal Board Inquiry System

v1.5

## Opposition

Number: 91183119

Filing Date: 03/24/2008

Status: Terminated

Status Date: 06/02/2008

Interlocutory Attorney: CHERYL S GOODMAN

## Defendant

Name: New World Pasta CompanyCorrespondence: CORY M. AMRON

VORYS, SATER, SEYMOUR AND PEASE LLP  
 1828 L ST NW FL 11  
 WASHINGTON, DC 20036-5104  
 UNITED STATES  
 iplaw@vssp.com

Serial #: 77138509Application File

Application Status: Fifth Extension - Granted

Mark: SMART TASTE

## Plaintiff

Name: ProMark Brands Inc.Correspondence: Timothy P. Fraelich

Jones Day  
 901 Lakeside Avenue  
 Cleveland, OH 44114  
 UNITED STATES  
 tfraelich@jonesday.com, clkiedrowski@jonesday.com,  
 jwalworth@jonesday.com, pcyingier@jonesday.com

Serial #: 78352011Application FileRegistration #: 2916539

Application Status: Section 8 and 15 - Accepted and Acknowledged

Mark: SMART ONES

Serial #: 78351994Application FileRegistration #: 2916538

Application Status: Section 8 and 15 - Accepted and Acknowledged

Mark: SMART ONES

Serial #: 75415119Application FileRegistration #: 2204080

Application Status: Renewed

Mark: SMART ONES

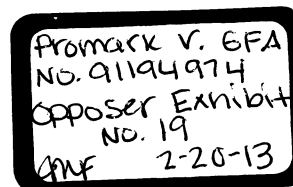
Serial #: 74528148Application FileRegistration #: 1911590

Application Status: Renewed

Mark: SMART ONES

## Prosecution History

#	Date	History Text	Due Date
7	06/02/2008	TERMINATED	
6	06/02/2008	BD'S DECISION: DISMISSED W/ PREJUDICE	
5	05/05/2008	WITHDRAWAL OF OPPOSITION	





4 05/02/2008 D'S AMENDMENT WITH CONSENT  
3 03/24/2008 PENDING, INSTITUTED  
2 03/24/2008 NOTICE AND TRIAL DATES SENT; ANSWER DUE: 05/03/2008  
1 03/24/2008 FILED AND FEE

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ESTTA Tracking number: **ESTTA200114**

Filing date: **03/24/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	ProMark Brands Inc.
Granted to Date of previous extension	03/23/2008
Address	2541 North Stokesberry Place, Suite 100 Meridian, ID 83636 UNITED STATES
Attorney information	Timothy P. Fraelich Jones Day 901 Lakeside Avenue Cleveland, OH 44114 UNITED STATES traelich@jonesday.com, clkiedrowski@jonesday.com, jwalworth@jonesday.com, pcyingier@jonesday.com Phone:216-586-1247

**Applicant Information**

Application No	77138509	Publication date	09/25/2007
Opposition Filing Date	03/24/2008	Opposition Period Ends	03/23/2008
Applicant	New World Pasta Company 85 Shannon Road Harrisburg, PA 17112 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 030. All goods and services in the class are opposed, namely: pasta, sauce, prepared or packaged meals consisting primarily of pasta and containing sauce
--------------------------------------------------------------------------------------------------------------------------------------------------------------------

**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	2916539	Application Date	01/14/2004
Registration Date	01/04/2005	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2001/04/01 First Use In Commerce: 2001/04/01 Pre-cooked ready-to-eat frozen bread or wrap having a meat and/or vegetable filling with or without cheese

U.S. Registration No.	2916538	Application Date	01/14/2004
Registration Date	01/04/2005	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/11/30 First Use In Commerce: 1997/11/30 Pizza		

U.S. Registration No.	2204080	Application Date	01/08/1998
Registration Date	11/17/1998	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/11/03 First Use In Commerce: 1997/11/03 Frozen desserts consisting of milk based or milk substitute based desserts, cakes, pies and mousses		

U.S. Registration No.	1911590	Application Date	05/20/1994
Registration Date	08/15/1995	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1992/05/01 First Use In Commerce: 1992/05/01 frozen entrees consisting primarily of chicken, beef, fish and/or vegetables Class 030. First use: First Use: 1992/05/01 First Use In Commerce: 1992/05/01 frozen entrees consisting primarily of pasta and/or rice alone or in combination with other foods		

Attachments	78352011#TMSN.jpeg ( 1 page )( bytes ) 78351994#TMSN.jpeg ( 1 page )( bytes ) 931063205005.pdf ( 3 pages )(107973 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Timothy P. Fraelich/
Name	Timothy P. Fraelich
Date	03/24/2008

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Application No. 77/138509  
For the mark SMART TASTE  
Date filed: March 23, 2007  
Published: September 25, 2007

PROMARK BRANDS, INC.  
2541 North Stokesberry Place  
Suite 100  
Meridian, Idaho 83642

Opposition No. \_\_\_\_\_

Opposer,

v.

NEW WORLD PASTA COMPANY  
85 Shannon Road  
Harrisburg, Pennsylvania 17112

Applicant.

COMMISSIONER FOR TRADEMARKS  
P.O. Box 1451  
Alexandria, VA 22313-1451

**NOTICE OF OPPOSITION**

1. Opposer, PROMARK BRANDS, INC., a corporation organized and existing under the laws of the State of Idaho, located and doing business at 2541 North Stokesberry Place, Suite 100, Meridian, Idaho, 83642 ("Opposer") believes that it will be damaged by registration of Application No. 77/138509 for the word SMART TASTE and hereby opposes same pursuant to 15 U.S.C. §§ 1052 and 1063.

2. To the best of Opposer's knowledge, the name and address of the current owner of the application is: NEW WORLD PASTA COMPANY, 85 Shannon Road, Harrisburg, Pennsylvania 17112.

As grounds for opposition, it is alleged that:

3. Applicant, New World Pasta Company, filed the above cited application to register the mark SMART TASTE in connection with the following goods: "pasta, sauce, prepared or packaged meals consisting primarily of pasta and containing sauce", in International Class 30. The application was published for opposition in the Official Gazette on September 25, 2007.

4. Opposer is the owner of United States Registration No. 2916539 issued on January 4, 2005 for the mark SMART ONES (the "Mark") to identify "pre-cooked ready-to-eat frozen bread or wrap having a meat and/or vegetable filling with or without cheese", in International Class 30.

5. Opposer, since as early as April 1, 2001 has been, and is now, using the mark SMART ONES throughout the United States and internationally in connection with goods described above.

6. Opposer is the owner of United States Registration No. 2916538 issued on January 4, 2005 for the mark SMART ONES (the "Mark") to identify "pizza", in International Class 30.

7. Opposer, since as early as April 1, 2001 has been, and is now, using the mark SMART ONES throughout the United States and internationally in connection with goods described above.

8. Opposer is the owner of United States Registration No. 2204080 issued on November 17, 1998 for the mark SMART ONES (the "Mark") to identify "frozen desserts consisting of milk based or milk substitute based desserts, cakes, pies and mousses", in International Class 30.

9. Registration No. 2204080 is valid, has not been abandoned by Opposer, and has become incontestable.

10. Opposer is the owner of United States Registration No. 1911590 issued on August 15, 1995 for the mark SMART ONES (the "Mark") to identify "frozen entrees consisting primarily of chicken, beef, fish and/or vegetables", in International Class 29, and "frozen entrees consisting primarily of pasta and/or rice alone or in combination with other foods", in International Class 30.

11. Registration No. 1911590 is valid, has not been abandoned by Opposer, and has become incontestable.

12. Opposer's continuous and commercially successful use of its Mark is symbolic of extensive good will and consumer recognition built up by Opposer through substantial amounts of time and effort in advertising and promotion of such Mark and has come to serve as a unique identifier of Opposer's goods.

13. In view of the similarity of the respective marks and the related nature of the goods and services of the respective parties, it is alleged that Applicant's mark SMART TASTE so resembles Opposer's Mark, as to be likely to cause confusion, or to cause mistake, or to deceive by suggesting that Applicant's goods and services are associated with or approved, endorsed, authorized or sponsored by Opposer.

14. The Commissioner is hereby authorized to charge Jones Day's Deposit Account No. 50-1432, in the amount of \$300 to account number 931063-205005. In case any other fees are required, please also charge this Deposit Account.

WHEREFORE, Opposer prays that Application No. 77/138509 for the word SMART TASTE be denied registration and that this Opposition be sustained in favor of Opposer.

Dated this 27<sup>th</sup> of March, 2008.

Respectfully submitted,

By: 

Timothy P. Fraelich  
Carrie L. Kiedrowski  
JONES DAY  
North Point  
901 Lakeside Avenue  
Cleveland, Ohio 44114  
Tel: (216) 586-3939  
Facsimile: (216) 579-0212

Attorneys for Opposer  
PROMARK BRANDS, INC.



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## TTABVUE. Trademark Trial and Appeal Board Inquiry System

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## Opposition

**Number:** 91178730**Filing Date:** 08/03/2007**Status:** Terminated**Status Date:** 09/15/2007**Interlocutory Attorney:** BRIAN D BROWN

## Defendant

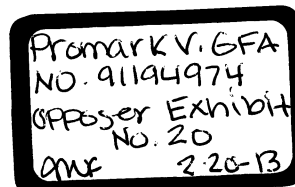
**Name:** Cherrydale Manufacturing, L.L.C.**Correspondence:** ROBERT W. SMITHMCCARTER & ENGLISH, LLP  
FOUR GATEWAY CENTER, 100 MULBERRY STREET  
NEWARK, NJ 07102-4056  
UNITED STATES  
rsmith@mccarter.com**Serial #:** 77064244Application File**Application Status:** Abandoned - After Inter-Partes Decision**Mark:** SMARTON'S

## Plaintiff

**Name:** ProMark Brands Inc.**Correspondence:** Thomas H. CurtinLathrop & Gage L.C.  
230 Park Avenue, Suite 1847  
New York, NY 10169  
UNITED STATES  
tcurtin@lathropgage.com**Serial #:** 74528148Application File**Registration #:** 1911590**Application Status:** Renewed**Mark:** SMART ONES**Serial #:** 75415119Application File**Registration #:** 2204080**Application Status:** Renewed**Mark:** SMART ONES**Serial #:** 78352011Application File**Registration #:** 2916539**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** SMART ONES**Serial #:** 78351994Application File**Registration #:** 2916538**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** SMART ONES

## Prosecution History

#	Date	History Text	Due Date
6	09/15/2007	TERMINATED	
5	09/15/2007	<u>BOARD'S DECISION: SUSTAINED</u>	
4	09/11/2007	<u>WITHDRAWAL OF APPLICATION</u>	
3	08/03/2007	PENDING, INSTITUTED	

<http://ttabvue.uspto.gov/ttabvue/v?pno=91178730&pty=OPP>

6/22/2011

HEINZ 001269



2 08/03/2007 NOTICE AND TRIAL DATES SENT; ANSWER DUE: 09/12/2007  
1 08/03/2007 FILED AND FEE

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ESTTA Tracking number: **ESTTA154726**

Filing date: **08/03/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	ProMark Brands Inc.		
Entity	Corporation	Citizenship	Idaho
Address	2541 North Stokesberry Place, Suite 100 Meridian, ID 83642 UNITED STATES		

Attorney information	Thomas H. Curtin Lathrop & Gage L.C. 230 Park Avenue, Suite 1847 New York, NY 10169 UNITED STATES tcurtin@lathropgage.com Phone:212-850-6220		
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**Applicant Information**

Application No	77064244	Publication date	07/10/2007
Opposition Filing Date	08/03/2007	Opposition Period Ends	08/09/2007
Applicant	Cherrydale Manufacturing, L.L.C. 1035 Mill Road Allentown, PA 18106 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 030. All goods and services in the class are opposed, namely: Chocolate based ready-to-eat food bars; grain based food bars; granola based snack bars; ready to eat, cereal derived food bars; toaster pastries; chocolate; and candy
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	1911590	Application Date	05/20/1994
Registration Date	08/15/1995	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 029. First use: First Use: 1992/05/01 First Use In Commerce: 1992/05/01 frozen entrees consisting primarily of chicken, beef, fish and/or vegetables Class 030. First use: First Use: 1992/05/01 First Use In Commerce: 1992/05/01 frozen entrees consisting primarily of pasta and/or rice alone or in combination with other foods
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U.S. Registration No.	2204080	Application Date	01/08/1998
Registration Date	11/17/1998	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/11/03 First Use In Commerce: 1997/11/03 Frozen desserts consisting of milk based or milk substitute based desserts, cakes, pies and mousses		

U.S. Registration No.	2916539	Application Date	01/14/2004
Registration Date	01/04/2005	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2001/04/01 First Use In Commerce: 2001/04/01 Pre-cooked ready-to-eat frozen bread or wrap having a meat and/or vegetable filling with or without cheese		

U.S. Registration No.	2916538	Application Date	01/14/2004
Registration Date	01/04/2005	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/11/30 First Use In Commerce: 1997/11/30 Pizza		

Attachments	78352011#TMSN.jpeg ( 1 page )( bytes ) 78351994#TMSN.jpeg ( 1 page )( bytes ) Notice of Opp SMARTON'S.pdf ( 5 pages )(192871 bytes )
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Signature	/Thomas H. Curtin/
Name	Thomas H. Curtin
Date	08/03/2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application

Mark:	SMARTON'S
Serial No.:	77/064,244
Published:	July 10, 2007

-----X  
PROMARK BRANDS INC.,

Opposer,

v.

Opposition No. \_\_\_\_\_

CHERRYDALE MANUFACTURING, L.L.C.,

Applicant.  
-----X

Commissioner of Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**NOTICE OF OPPOSITION**

In the matter of Application Serial No. 77/064,244 for registration of the claimed trademark SMARTON'S for use in connection with "chocolate based ready-to-eat food bars; grain based food bars; granola based snack bars; ready to eat, cereal derived food bars; toaster pastries; chocolate; and candy" in International Class 30 filed on December 14, 2006 by Cherrydale Manufacturing, L.L.C. ("Applicant") of 1035 Mill Road, Allentown, Pennsylvania 18106, which was published in the Official Gazette of July 10, 2007, ProMark Brands Inc. ("Opposer"), a corporation duly organized and existing under the laws of Idaho and having a

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place of business at 2541 North Stokesberry Place, Suite 100, Meridian, Idaho 83642, believes that it will be damaged by the registration and, therefore, opposes the same.

As grounds for opposition, it is alleged that:

1. Since May 1, 1992, long prior to the acts of the Applicant herein alleged, Opposer, through its predecessors and licensee, has continuously manufactured, advertised and sold to the trade and the public in interstate commerce throughout the United States a variety of food products, including frozen entrees, under Opposer's SMART ONES trademark.
2. Since prior to the acts of Applicant herein alleged, Opposer has been the owner of the following registrations in the United States Patent and Trademark Office for the SMART ONES mark, which registrations have not been cancelled, are valid and in full force and effect:

<u>Trademark</u>	<u>Registration</u>	<u>Registration Date</u>
SMART ONES	1,911,590	August 15, 1995
SMART ONES	2,204,080	November 17, 1998
SMART ONES	2,916,539	January 4, 2005
SMART ONES	2,916,538	January 4, 2005

Registration Nos. 1,911,590 and 2,204,080 have become incontestable as a matter of law under 15 U.S.C. Section 1065.

3. Opposer's ownership in Registration Nos. 1,911,590 and 2,204,080 for the SMART ONES mark results from the following chain of title:

Assignment

by Weight Watchers International Inc. to H. J. Heinz Company; recorded at Reel 1971/Frame 0642;

Assignment

by H. J. Heinz Company to ProMark International, Inc.; recorded at Reel 2327/Frame 0405;

Merger

of ProMark International Inc. into H. J. Heinz Company; recorded at Reel 2633/Frame 0413; and Assignment by H. J. Heinz Company to ProMark Brands Inc.; recorded at Reel 2631/Frame 0678.

4. Since long prior to the acts of the Applicant as alleged herein, Opposer and its predecessors-in-interest have continuously manufactured, advertised and sold to the trade and public in interstate commerce throughout the United States substantial quantities of food products of high quality under Opposer's SMART ONES trademark.

5. Since long prior to the acts of Applicant alleged herein, Opposer and its predecessors-in-interest have widely and continuously advertised and promoted Opposer's food products, including frozen entrees and side dishes, throughout the United States under its mark SMART ONES. Opposer's food products sold and advertised under the SMART ONES trademark have acquired and now possess a wide and favorable reputation.

6. Since long prior to the acts of Applicant alleged herein, Opposer's mark SMART ONES has been used by Opposer and its predecessors-in-interest for the purpose of identifying and distinguishing its food products from similar products of others and the trade and public have come to know and recognize said trademark as identifying the food products of Opposer as the source thereof exclusively.

7. Since prior to the acts of Applicant alleged herein, as a result of the care and skill exercised by Opposer and its predecessors-in-interest in the manufacture and sale of its products under the SMART ONES trademark, the supervision and control exercised by Opposer and its predecessors-in-interest over the nature and quality of these products sold under Opposer's SMART ONES trademark, and the sale and public acceptance thereof, said products have acquired a fine reputation and said trademark has acquired an outstanding celebrity symbolizing the goodwill which Opposer and its predecessors-in-interest have created throughout the United

States by the sale of products of dependable quality and by fair and honorable dealing with the trade and public in the sales of such products.

8. Applicant's application to register SMARTON'S was filed on December 14, 2006 alleging a bona fide intention to use the mark in commerce in connection with "chocolate based ready-to-eat food bars; grain based food bars; granola based snack bars; ready to eat, cereal derived food bars; toaster pastries; chocolate; and candy" in International Class 30.

9. Upon information and belief, Applicant's claimed mark SMARTON'S to be used in connection with the goods covered by Application Serial No. 77/064,244 is confusingly similar to Opposer's SMART ONES trademark as used by Opposer.

10. Upon information and belief, the products to which Applicant's claimed mark will be used are closely related to or complementary with various products on and in connection with which Opposer and its predecessors-in-interest have used and use the SMART ONES mark.

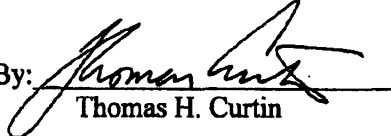
11. Upon information and belief, the goods to which Applicant's claimed mark will be applied and the products on and in connection with which Opposer uses and its predecessors-in-interest have used its SMART ONES mark are products that are offered for sale and sold in the same channels of trade, offered for sale and sold to the same class of purchasers, and Applicant's claimed mark as applied to such goods is likely to cause confusion, deception or mistake, all to the damage of Opposer.

12. Applicant's claimed mark is nearly identical to and so resembles Opposer's SMART ONES mark as to be likely, when applied to Applicant's goods, to cause confusion, to cause mistake, or to deceive purchasers, all to the damage of Opposer.

WHEREFORE, Opposer believes it will be damaged by the registration of Application Serial No. 77/064,244 for the mark SMARTON'S and respectfully requests that the registration sought by Applicant be denied.

Respectfully submitted,

LATHROP & GAGE L.C.

By:   
Thomas H. Curtin

230 Park Avenue, Suite 1847  
New York, New York 10169  
(212) 850-6220  
(212) 850-6221 (fax)

Attorneys for Opposer





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**Opposition****Number:** 91178746**Filing Date:** 08/03/2007**Status:** Terminated**Status Date:** 03/06/2008**Interlocutory Attorney:** CHERYL A BUTLER**Defendant****Name:** Jonmor Investments, Inc.**Correspondence:** JEFFREY A. PORTER

REED SMITH, LLP

P.O. BOX 7990, INTELLECTUAL PROPERTY

PHILADELPHIA, PA 19101-7990

UNITED STATES

**Serial #:** 77102934Application File**Application Status:** Abandoned - After Inter-Partes Decision**Mark:** SMART SELECTIONS**Plaintiff****Name:** ProMark Brands Inc.**Correspondence:** Timothy P. Fraelich

Jones Day

901 Lakeside Avenue

Cleveland, OH 44114

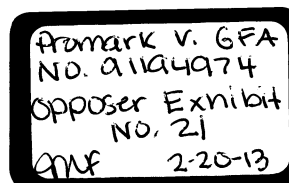
UNITED STATES

tfraclich@jonesday.com, clkiedrowski@jonesday.com,

jwwalworthjr@jonesday.com, pcyingier@jonesday.com

**Serial #:** 74528148Application File**Registration #:** 1911590**Application Status:** Renewed**Mark:** SMART ONES**Serial #:** 75415119Application File**Registration #:** 2204080**Application Status:** Renewed**Mark:** SMART ONES**Serial #:** 78352011Application File**Registration #:** 2916539**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** SMART ONES**Serial #:** 78351994Application File**Registration #:** 2916538**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** SMART ONES**Prosecution History**

#	Date	History Text	Due Date
8	03/06/2008	TERMINATED	
7	03/06/2008	<u>BD'S DECISION: DISMISSED W/O PREJUDICE</u>	
6	02/29/2008	<u>WITHDRAWAL OF APPLICATION</u>	
5	12/12/2007	<u>CHANGE OF CORRESPONDENCE ADDRESS</u>	



<u>4</u>	09/19/2007	<u>ANSWER</u>	
<u>3</u>	08/06/2007	PENDING, INSTITUTED	
<u>2</u>	08/06/2007	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	09/15/2007
<u>1</u>	08/03/2007	<u>FILED AND FEE</u>	

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ESTTA Tracking number: **ESTTA154721**Filing date: **08/03/2007**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	ProMark Brands Inc.		
Entity	Corporation	Citizenship	Idaho
Address	2541 North Stokesberry Place Suite 100 Meridian, ID 83642 UNITED STATES		

Attorney information	Thomas H. Curtin Lathrop & Gage, L.C. 230 Park Avenue Suite 1847 New York, NY 10169 UNITED STATES tcurtin@lathropgage.com Phone:212-850-6220
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**Applicant Information**

Application No	77102934	Publication date	07/10/2007
Opposition Filing Date	08/03/2007	Opposition Period Ends	08/09/2007
Applicant	Jonmor Investments, Inc. 103 Baynard Building 3411 Silverside Road Wilmington, DE 19810 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 029. All goods and services in the class are opposed, namely: meat; processed meats; luncheon meats; entrees and meals consisting primarily of meat, poultry, or vegetables
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	1911590	Application Date	05/20/1994
Registration Date	08/15/1995	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 029. First use: First Use: 1992/05/01 First Use In Commerce: 1992/05/01 frozen entrees consisting primarily of chicken, beef, fish and/or vegetables Class 030. First use: First Use: 1992/05/01 First Use In Commerce: 1992/05/01 frozen entrees consisting primarily of pasta and/or rice alone or in combination with other foods
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U.S. Registration No.	2204080	Application Date	01/08/1998
Registration Date	11/17/1998	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/11/03 First Use In Commerce: 1997/11/03 Frozen desserts consisting of milk based or milk substitute based desserts, cakes, pies and mousses		

U.S. Registration No.	2916539	Application Date	01/14/2004
Registration Date	01/04/2005	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2001/04/01 First Use In Commerce: 2001/04/01 Pre-cooked ready-to-eat frozen bread or wrap having a meat and/or vegetable filling with or without cheese		

U.S. Registration No.	2916538	Application Date	01/14/2004
Registration Date	01/04/2005	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/11/30 First Use In Commerce: 1997/11/30 Pizza		

Attachments	78352011#TMSN.jpeg ( 1 page )( bytes ) 78351994#TMSN.jpeg ( 1 page )( bytes ) SMART SELECTIONS NOO.pdf ( 5 pages )(187443 bytes )
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Signature	/Thomas H. Curtin/
Name	Thomas H. Curtin
Date	08/03/2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application

Mark: SMART SELECTIONS

Serial No.: 77/102,934

Published: July 10, 2007

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PROMARK BRANDS INC.,

Opposer,

v.

JONMOR INVESTMENTS, INC.,

Applicant.  
-----X

Opposition No. \_\_\_\_\_

Commissioner of Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**NOTICE OF OPPOSITION**

In the matter of Application Serial No. 77/102,934 for registration of the claimed trademark SMART SELECTIONS for use in connection with "meat; processed meats; luncheon meats; entrees and meals consisting primarily of meat, poultry, or vegetables" in International Class 29 filed on February 8, 2007 by Jonmor Investments, Inc. ("Applicant") of 3411 Silverside Road, Wilmington, Delaware 19810, which was published in the Official Gazette of July 10, 2007, ProMark Brands Inc. ("Opposer"), a corporation duly organized and existing under the laws of Idaho and having a place of business at 2541 North Stokesberry Place, Suite 100,

NYDOCS 52348v1

HEINZ 001249

Meridian, Idaho 83642, believes that it will be damaged by the registration and, therefore, opposes the same.

As grounds for opposition, it is alleged that:

1. Since May 1, 1992, long prior to the acts of the Applicant herein alleged, Opposer, through its predecessors and licensee, has continuously manufactured, advertised and sold to the trade and the public in interstate commerce throughout the United States a variety of food products, including frozen entrees, under Opposer's SMART ONES trademark.

2. Since prior to the acts of Applicant herein alleged, Opposer has been the owner of the following registrations in the United States Patent and Trademark Office for the SMART ONES mark, which registrations have not been cancelled, are valid and in full force and effect:

<u>Trademark</u>	<u>Registration</u>	<u>Registration Date</u>
SMART ONES	1,911,590	August 15, 1995
SMART ONES	2,204,080	November 17, 1998
SMART ONES	2,916,539	January 4, 2005
SMART ONES	2,916,538	January 4, 2005

Registration Nos. 1,911,590 and 2,204,080 have become incontestable as a matter of law under 15 U.S.C. Section 1065.

3. Opposer's ownership in Registration Nos. 1,911,590 and 2,204,080 for the SMART ONES mark results from the following chain of title:

Assignment  
by Weight Watchers International Inc. to H. J. Heinz Company; recorded at Reel 1971/Frame 0642;

Assignment  
by H. J. Heinz Company to ProMark International, Inc.; recorded at Reel 2327/Frame 0405;  
Merger

of ProMark International Inc. into H. J. Heinz Company; recorded at Reel 2633/Frame 0413; and Assignment by H. J. Heinz Company to ProMark Brands Inc.; recorded at Reel 2631/Frame 0678.

4. Since long prior to the acts of the Applicant as alleged herein, Opposer and its predecessors-in-interest have continuously manufactured, advertised and sold to the trade and public in interstate commerce throughout the United States substantial quantities of food products of high quality under Opposer's SMART ONES trademark.

5. Since long prior to the acts of Applicant alleged herein, Opposer and its predecessors-in-interest have widely and continuously advertised and promoted Opposer's food products including, without limitation, frozen entrees consisting primarily of chicken, beef, fish and/or vegetables, throughout the United States under its mark SMART ONES. Opposer's food products sold and advertised under the SMART ONES trademark have acquired and now possess a wide and favorable reputation.

6. Since long prior to the acts of Applicant alleged herein, Opposer's mark SMART ONES has been used by Opposer and its predecessors-in-interest for the purpose of identifying and distinguishing its food products from similar products of others and the trade and public have come to know and recognize said trademark as identifying the food products of Opposer as the source thereof exclusively.

7. Since prior to the acts of Applicant alleged herein, as a result of the care and skill exercised by Opposer and its predecessors-in-interest in the manufacture and sale of its products under the SMART ONES trademark, the supervision and control exercised by Opposer and its predecessors-in-interest over the nature and quality of these products sold under Opposer's SMART ONES trademark, and the sale and public acceptance thereof, said products have acquired a fine reputation and said trademark has acquired an outstanding celebrity symbolizing

the goodwill which Opposer and its predecessors-in-interest have created throughout the United States by the sale of products of dependable quality and by fair and honorable dealing with the trade and public in the sales of such products.

8. Applicant's application to register SMART SELECTIONS was filed on February 8, 2007 alleging a bona fide intention to use the mark in commerce in connection with "meat; processed meats; luncheon meats; entrees and meals consisting primarily of meat, poultry, or vegetables" in International Class 29.

9. Upon information and belief, Applicant's claimed mark SMART SELECTIONS to be used in connection with the goods covered by Application Serial No. 77/102,934 is confusingly similar to Opposer's SMART ONES trademark as used by Opposer.

10. Upon information and belief, the products to which Applicant's claimed mark will be used are nearly identical to or complementary with the food products on and in connection with which Opposer and its predecessors-in-interest have used and use the SMART ONES mark.

11. Upon information and belief, the goods to which Applicant's claimed mark will be applied and the products on and in connection with which Opposer uses and its predecessors-in-interest have used its SMART ONES mark are products that are offered for sale and sold in the same channels of trade, offered for sale and sold to the same class of purchasers, and Applicant's claimed mark as applied to such goods is likely to cause confusion, deception or mistake, all to the damage of Opposer.

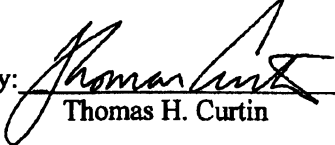
12. Applicant's claimed mark so resembles Opposer's SMART ONES mark as to be likely, when applied to Applicant's goods, to cause confusion, to cause mistake, or to deceive purchasers, all to the damage of Opposer.



WHEREFORE, Opposer believes it will be damaged by the registration of Application Serial No. 77/102,934 for the mark SMART SELECTIONS and respectfully requests that the registration sought by Applicant be denied.

Respectfully submitted,

LATHROP & GAGE L.C.

By:   
Thomas H. Curtin

230 Park Avenue, Suite 1847  
New York, New York 10169  
(212) 850-6220  
(212) 850-6221 (fax)

Attorneys for Opposer



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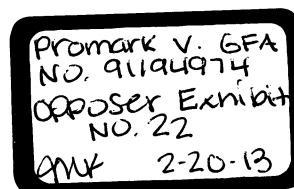
v1.5

## Opposition

**Number:** 91175302**Filing Date:** 01/24/2007**Status:** Terminated**Status Date:** 05/04/2007**Interlocutory Attorney:** ELIZABETH A DUNN**Defendant****Name:** UNILEVER SUPPLY CHAIN, INC.**Correspondence:** MITCHELL A. FRANKUNILEVER LAW DEPARTMENT  
700 SYLVAN AVENUE, B3  
ENGLEWOOD CLIFFS, NJ 07632-3100  
UNITED STATES  
mitchell.frank@unilever.com**Serial #:** 78638913[Application File](#)**Application Status:** Abandoned - After Inter-Partes Decision**Mark:** SMART SOLUTIONS**Plaintiff****Name:** PROMARK BRANDS INC.**Correspondence:** Gianfranco G. MitrioneLathrop & Gage L.C.  
230 Park Avenue, Suite 1847  
New York, NY 10169  
UNITED STATES  
gmitrione@lathropgage.com, tcurtin@lathropgage.com**Prosecution History**

#	Date	History Text	Due Date
6	05/04/2007	TERMINATED	
5	05/04/2007	<u>BOARD'S DECISION: SUSTAINED</u>	
4	03/20/2007	<u>NOTICE OF DEFAULT</u>	
3	01/24/2007	PENDING, INSTITUTED	
2	01/24/2007	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	03/05/2007
1	01/24/2007	<u>FILED AND FEE</u>	

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6/22/2011

HEINZ 001206

ESTTA Tracking number: **ESTTA121380**

Filing date: **01/24/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	PROMARK BRANDS INC.
Granted to Date of previous extension	01/24/2007
Address	2541 NORTH STOKESBERRY PLACE, SUITE 100 MERIDIAN, ID 83646 UNITED STATES
Attorney information	Gianfranco G. Mitrione/ Thomas H. Curtin Lathrop & Gage L.C. 230 Park Avenue, Suite 1847 New York, NY 10169 UNITED STATES gmitrione@lathropgage.com, tcurtin@lathropgage.com Phone: 212-850-6220

**Applicant Information**

Application No	78638913	Publication date	09/26/2006
Opposition Filing Date	01/24/2007	Opposition Period Ends	01/24/2007
Applicant	Unilever Supply Chain, Inc. 1 John Street Clinton, CT 06413 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 030. All goods and services in the class are opposed, namely: Prepared or packaged side dishes consisting primarily of pasta or rice for retail sale
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Attachments	notice of opp - unilever_20070124170700.pdf ( 5 pages )(189339 bytes )
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Signature	/Gianfranco G. Mitrione/
Name	Gianfranco G. Mitrione
Date	01/24/2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----X	
PROMARK BRANDS INC.,	:
	:
Opposer,	:
	:
v.	:
	:
UNILEVER SUPPLY CHAIN, INC.,	:
	:
Applicant.	:
-----X	

Opposition No. \_\_\_\_\_

Commissioner of Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**NOTICE OF OPPOSITION**

In the matter of application Serial No. 78/638,913 for registration of the claimed trademark SMART SOLUTIONS for use in connection with "prepared or packaged side dishes consisting primarily of pasta or rice for retail sale" filed on May 27, 2005 by Unilever Supply Chain, Inc. ("Applicant") of 1 John Street, Clinton, CT 06413, which was published in the Official Gazette of September 26, 2006, ProMark Brands Inc. ("Opposer"), a corporation duly organized and existing under the laws of Idaho and having a place of business at 2541 North Stokesberry Place, Suite 100, Meridian, ID 83642, believes that it will be damaged by the registration and, therefore, opposes the same.

As grounds for opposition, it is alleged that:

1. Since May 1, 1992, long prior to the acts of the Applicant herein alleged, Opposer, through its predecessors and licensee, has continuously manufactured, advertised and

sold to the trade and the public in interstate commerce throughout the United States a variety of food products, including frozen entrees, under Opposer's SMART ONES trademark.

2. Since prior to the acts of Applicant herein alleged, Opposer has been the owner of the following registrations in the United States Patent and Trademark Office for the SMART ONES mark, which registrations have not been cancelled, are valid and in full force and effect:

<u>Trademark</u>	<u>Registration</u>	<u>Registration Date</u>
SMART ONES	1,911,590	August 15, 1995
SMART ONES	2,204,080	November 17, 1998
SMART ONES	2,916,539	January 4, 2005
SMART ONES	2,916,538	January 4, 2005

Registration Nos. 1,911,590 and 2,204,080 have become incontestable as a matter of law under 15 U.S.C. Section 1065.

3. Opposer's ownership in Registration Nos. 1,911,590 and 2,204,080 for the SMART ONES mark results from the following chain of title:

Assignment

by Weight Watchers International Inc. to H. J. Heinz Company; recorded at Reel 1971/Frame 0642.

Assignment

by H. J. Heinz Company to ProMark International, Inc.; recorded at Reel 2327/Frame 0405.

Merger

of ProMark International Inc. into H. J. Heinz Company; recorded at Reel 2633/Frame 0413.

Assignment

by H. J. Heinz Company to ProMark Brands Inc.; recorded at Reel 2631/Frame 0678.

4. Since long prior to the acts of the Applicant as alleged herein, Opposer and its predecessors-in-interest have continuously manufactured, advertised and sold to the trade and public in interstate commerce throughout the United States substantial quantities of food products of high quality under Opposer's SMART ONES trademark.

5. Since long prior to the acts of Applicant alleged herein, Opposer and its predecessors-in-interest have widely and continuously advertised and promoted Opposer's food products, including frozen entrees and side dishes, throughout the United States under its mark SMART ONES. Opposer food products sold and advertised under said trademark have acquired and now possess a wide and favorable reputation.

6. Since long prior to the acts of Applicant alleged herein, Opposer's mark SMART ONES has been used by Opposer and its predecessors-in-interest for the purpose of identifying and distinguishing its food products from similar products of others and the trade and public have come to know and recognize said trademark as identifying the food products of Opposer as the source thereof exclusively.

7. Since prior to the acts of Applicant alleged herein, as a result of the care and skill exercised by Opposer and its predecessors-in-interest in the manufacture and sale of the aforesaid products under the SMART ONES trademark, the supervision and control exercised by Opposer and its predecessors-in-interest over the nature and quality of these products sold under Opposer's SMART ONES trademark, and the sale and public acceptance thereof, said products have acquired a fine reputation and said trademark has acquired an outstanding celebrity symbolizing the goodwill which Opposer and its predecessors-in-interest have created throughout the United States by the sale of products of dependable quality and by fair and honorable dealing with the trade and public in the sales of such products.

8. Applicant's application to register SMART SOLUTIONS was filed on May 27, 2005 alleging a bona fide intention to use the mark in commerce in connection with "prepared or packaged side dishes consisting primarily of pasta or rice for retail sale."

9. Upon information and belief, Applicant's claimed mark SMART SOLUTIONS to be used in connection with the goods covered by Application Serial No. 78/638,913 is confusingly similar to Opposer's SMART ONES trademark as used by Opposer.

10. Upon information and belief, the products to which Applicant's claimed mark will be used are nearly identical to or complementary with various products on and in connection with which Opposer and its predecessors-in-interest have used and use the SMART ONES mark.

11. Upon information and belief, the goods to which Applicant's claimed mark will be applied and the products on and in connection with which Opposer uses and its predecessors-in-interest have used its SMART ONES mark are products that are offered for sale and sold in the same channels of trade, offered for sale and sold to the same class of purchasers, and Applicant's claimed mark as applied to such goods is likely to cause confusion, deception or mistake, all to the damage of Opposer.

12. Applicant's claimed mark so resembles Opposer's SMART ONES mark as to be likely, when applied to Applicant's goods, to cause confusion, to cause mistake, or to deceive purchasers, all to the damage of Opposer.

Wherefore, Opposer believes it will be damaged by the registration of SMART SOLUTIONS and respectively requests that the registration sought by Applicant be denied.

Respectfully submitted,

LATHROP & GAGE L.C.

By: /Gianfranco G. Mitrione/

Thomas H. Curtin

Gianfranco G. Mitrione

230 Park Avenue, Suite 1847

New York, NY 10169

(212) 850-6220

Attorneys for Opposer





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## TTABVUE. Trademark Trial and Appeal Board Inquiry System

v1.5

## Opposition

**Number:** 91176390**Filing Date:** 03/26/2007**Status:** Terminated**Status Date:** 10/24/2007**Interlocutory Attorney:** CHERYL A BUTLER

## Defendant

**Name:** ConAgra Foods RDM, Inc. f/k/a Conagra Brands, Inc.**Correspondence:** Tracy L. Deutmeyer

McGrath North Mullin &amp; Kratz, PC LLO

Suite 3700, First National Tower 1601 Dodge Street

Omaha, NE 68102

UNITED STATES

cbikus@mcgrathnorth.com, tdeutmeyer@mcgrathnorth.com

**Serial #:** 78828329Application File**Application Status:** Abandoned - After Inter-Partes Decision**Mark:** SMART BOWLS

## Plaintiff

**Name:** PROMARK BRANDS INC.**Correspondence:** Thomas H. Curtin

Lathrop &amp; Gage L.C.

230 Park Avenue, Suite 1847

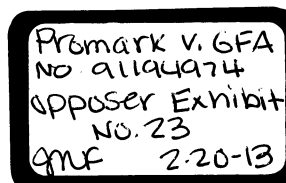
New York, NY 10169

UNITED STATES

tcurtin@lathropgage.com

## Prosecution History

#	Date	History Text	Due Date
10	10/24/2007	TERMINATED	
9	10/24/2007	<u>BD'S DECISION: DISMISSED W/O PREJUDICE</u>	
8	10/22/2007	<u>WITHDRAWAL OF APPLICATION</u>	
7	10/17/2007	<u>D'S MOTION TO JOIN/SUBSTITUTE PARTY</u>	
6	10/09/2007	<u>EXTENSION OF TIME GRANTED</u>	
5	10/09/2007	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
4	05/07/2007	ANSWER	
3	03/26/2007	PENDING, INSTITUTED	
2	03/26/2007	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	05/05/2007
1	03/26/2007	<u>FILED AND FEE</u>	

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ESTTA Tracking number: **ESTTA131865**

Filing date: **03/26/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	PROMARK BRANDS INC.
Granted to Date of previous extension	03/25/2007
Address	2541 NORTH STOKESBERRY PLACE, SUITE 100 MERIDIAN, ID 83646 UNITED STATES
Attorney information	Thomas H. Curtin Lathrop & Gage L.C. 230 Park Avenue, Suite 1847 New York, NY 10169 UNITED STATES tcurtin@lathropgage.com

**Applicant Information**

Application No	78828329	Publication date	09/26/2006
Opposition Filing Date	03/26/2007	Opposition Period Ends	03/25/2007
Applicant	ConAgra Brands, Inc. One ConAgra Drive Omaha, NE 681025001 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 029. All goods and services in the class are opposed, namely: frozen entrees consisting primarily of a soy-based meat substitute
Class 030. All goods and services in the class are opposed, namely: frozen entrees consisting primarily of pasta or rice

Attachments	Heinz - SMART BOWLS Notice of Opposition.PDF ( 5 pages )(31792 bytes )
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Signature	/T. Curtin/
Name	Thomas H. Curtin
Date	03/26/2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----X	
PROMARK BRANDS INC.,	:
	:
Opposer,	:
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v.	:
	:
CONAGRA BRANDS, INC.,	:
	:
Applicant.	:
	:
-----X	

Opposition No. \_\_\_\_\_

Commissioner of Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**NOTICE OF OPPOSITION**

In the matter of application Serial No. 78/828,329 for registration of the claimed trademark SMART BOWLS for use in connection with "frozen entrees consisting primarily of a soy-based meat substitute" and "frozen entrees consisting primarily of pasta or rice" filed on March 3, 2006 by ConAgra Brands, Inc. ("Applicant") of One ConAgra Drive, Omaha, NE 68102-5001, which was published in the Official Gazette of September 26, 2006, ProMark Brands Inc. ("Opposer"), a corporation duly organized and existing under the laws of Idaho and having a place of business at 2541 North Stokesberry Place, Suite 100, Meridian, ID 83642, believes that it will be damaged by the registration and, therefore, opposes the same.

As grounds for opposition, it is alleged that:

1. Since May 1, 1992, long prior to the acts of the Applicant herein alleged, Opposer, through its predecessors and licensee, has continuously manufactured, advertised and

sold to the trade and the public in interstate commerce throughout the United States a variety of food products, including frozen entrees, under Opposer's SMART ONES trademark.

2. Since prior to the acts of Applicant herein alleged, Opposer has been the owner of the following registrations in the United States Patent and Trademark Office for the SMART ONES mark, which registrations have not been cancelled, are valid and in full force and effect:

<u>Trademark</u>	<u>Registration</u>	<u>Registration Date</u>
SMART ONES	1,911,590	August 15, 1995
SMART ONES	2,204,080	November 17, 1998
SMART ONES	2,916,539	January 4, 2005
SMART ONES	2,916,538	January 4, 2005

Registration Nos. 1,911,590 and 2,204,080 have become incontestable as a matter of law under 15 U.S.C. Section 1065.

3. Opposer's ownership in Registration Nos. 1,911,590 and 2,204,080 for the SMART ONES mark results from the following chain of title:

Assignment

by Weight Watchers International Inc. to H. J. Heinz Company; recorded at Reel 1971/Frame 0642.

Assignment

by H. J. Heinz Company to ProMark International, Inc.; recorded at Reel 2327/Frame 0405.

Merger

of ProMark International Inc. into H. J. Heinz Company; recorded at Reel 2633/Frame 0413.

Assignment

by H. J. Heinz Company to ProMark Brands Inc.; recorded at Reel 2631/Frame 0678.

4. Since long prior to the acts of the Applicant as alleged herein, Opposer and its predecessors-in-interest have continuously manufactured, advertised and sold to the trade and public in interstate commerce throughout the United States frozen entrees under Opposer's SMART ONES trademark.

5. Since long prior to the acts of Applicant alleged herein, Opposer and its predecessors-in-interest have widely and continuously advertised and promoted Opposer's food products, including frozen entrees, throughout the United States under its mark SMART ONES. Opposer food products sold and advertised under said trademark have acquired and now possess a wide and favorable reputation.

6. Since long prior to the acts of Applicant alleged herein, Opposer's mark SMART ONES has been used by Opposer and its predecessors-in-interest for the purpose of identifying and distinguishing its food products from similar products of others and the trade and public have come to know and recognize said trademark as identifying the food products of Opposer as the source thereof exclusively.

7. Since prior to the acts of Applicant alleged herein, as a result of the care and skill exercised by Opposer and its predecessors-in-interest in the manufacture and sale of the aforesaid products under the SMART ONES trademark, the supervision and control exercised by Opposer and its predecessors-in-interest over the nature and quality of these products sold under Opposer's SMART ONES trademark, and the sale and public acceptance thereof, said products have acquired a fine reputation and said trademark has acquired an outstanding celebrity symbolizing the goodwill which Opposer and its predecessors-in-interest have created throughout the United States by the sale of products of dependable quality and by fair and honorable dealing with the trade and public in the sales of such products.

8. Applicant's application to register SMART BOWLS was filed on March 3, 2006 alleging a bona fide intention to use the mark in commerce in connection with "frozen entrees consisting primarily of a soy-based meat substitute" and "frozen entrees consisting primarily of pasta or rice."

9. Upon information and belief, Applicant's claimed mark SMART BOWLS to be used in connection with the goods covered by Application Serial No. 78/828,329 is confusingly similar to Opposer's SMART ONES trademark as used by Opposer.

10. Upon information and belief, the products to which Applicant's claimed mark will be used are nearly identical to or complementary with various products on and in connection with which Opposer and its predecessors-in-interest have used and use the SMART ONES mark.

11. Upon information and belief, the goods to which Applicant's claimed mark will be applied and the products on and in connection with which Opposer uses and its predecessors-in-interest have used its SMART ONES mark are products that are offered for sale and sold in the same channels of trade, offered for sale and sold to the same class of purchasers, and Applicant's claimed mark as applied to such goods is likely to cause confusion, deception or mistake, all to the damage of Opposer.

12. Applicant's claimed mark so resembles Opposer's SMART ONES mark as to be likely, when applied to Applicant's goods, to cause confusion, to cause mistake, or to deceive purchasers, all to the damage of Opposer.

Wherefore, Opposer believes it will be damaged by the registration of SMART BOWLS and respectively requests that the registration sought by Applicant be denied.

Respectfully submitted,

LATHROP & GAGE L.C.

By: /Thomas H. Curtin/  
Thomas H. Curtin

230 Park Avenue, Suite 1847  
New York, NY 10169  
(212) 850-6220

Attorneys for Opposer



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## TTABVUE. Trademark Trial and Appeal Board Inquiry System

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## Opposition

**Number:** 91193087**Filing Date:** 12/21/2009**Status:** Terminated**Status Date:** 12/01/2010**Interlocutory Attorney:** JENNIFER KRISP**Defendant****Name:** Radlo Foods LLC**Correspondence:** BASSAM N IBRAHIM

BUCHANAN INGERSOLL &amp; ROONEY PC

1737 KING STREET, SUITE 500

ALEXANDRIA, VA 22314-1404

UNITED STATES

bassam.ibrahim@bipc.com, lloyd.smith@bipc.com

**Serial #:** 77620901[Application File](#)**Application Status:** Abandoned - After Inter-Partes Decision**Mark:** SMART GOODNESS**Plaintiff****Name:** GFA Brands, Inc.**Correspondence:** PATRICK M BERGIN

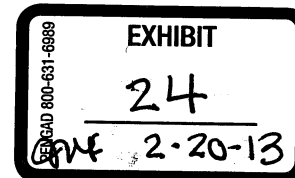
DAVIS &amp; KUELTHAU SC

111 EAST KILBOURN AVENUE, SUITE 1400

MILWAUKEE, WI 53202

UNITED STATES

jheino@dkattorneys.com

**Serial #:** 76252358[Application File](#)**Registration #:** 2952127**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** SMART BALANCE**Serial #:** 75127811[Application File](#)**Registration #:** 2276285**Application Status:** Renewed**Mark:** SMART BALANCE**Serial #:** 75977525[Application File](#)**Registration #:** 2200663**Application Status:** Renewed**Mark:** SMART BALANCE**Serial #:** 77512724[Application File](#)**Registration #:** 3649833**Application Status:** Registered**Mark:** SMART BALANCE**Serial #:** 78272133[Application File](#)**Registration #:** 2958216**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** SMART BALANCE OMEGA**Serial #:** 77200582[Application File](#)**Application Status:** Abandoned - No Statement Of Use Filed



**Mark:** SMART BALANCE**Serial #:** 77566103Application File**Registration #:** 3747526**Application Status:** Registered**Mark:** SMART BALANCE**Prosecution History**

#	Date	History Text	Due Date
21	12/01/2010	TERMINATED	
<u>20</u>	12/01/2010	<u>BOARD'S DECISION: SUSTAINED</u>	
<u>19</u>	11/23/2010	<u>WITHDRAWAL OF APPLICATION</u>	
<u>18</u>	10/26/2010	<u>EXTENSION OF TIME GRANTED</u>	
<u>17</u>	10/26/2010	<u>STIPULATION FOR AN EXTENSION OF TIME</u>	
<u>16</u>	09/11/2010	<u>EXTENSION OF TIME GRANTED</u>	
<u>15</u>	08/30/2010	<u>D'S MOT FOR EXTEN. OF TIME W/ CONSENT</u>	
<u>14</u>	07/08/2010	<u>EXTENSION OF TIME GRANTED</u>	
<u>13</u>	06/29/2010	<u>D'S MOT FOR EXTEN. OF TIME W/ CONSENT</u>	
<u>12</u>	05/13/2010	<u>D'S CHANGE OF CORRESPONDENCE ADDRESS</u>	
<u>11</u>	05/13/2010	<u>CHANGE OF CORRESPONDENCE ADDRESS</u>	
<u>10</u>	05/10/2010	<u>EXTENSION OF TIME GRANTED</u>	
<u>9</u>	04/30/2010	<u>D'S MOT FOR EXTEN. OF TIME W/ CONSENT</u>	
<u>8</u>	04/12/2010	<u>EXTENSION OF TIME GRANTED</u>	
<u>7</u>	03/31/2010	<u>D'S MOT FOR EXTEN. OF TIME W/ CONSENT</u>	
<u>6</u>	04/05/2010	<u>EXTENSION OF TIME GRANTED</u>	
<u>5</u>	03/30/2010	<u>D'S MOT FOR EXTEN. OF TIME W/ CONSENT</u>	
<u>4</u>	01/25/2010	<u>ANSWER</u>	
<u>3</u>	12/21/2009	PENDING, INSTITUTED	
<u>2</u>	12/21/2009	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	01/30/2010
<u>1</u>	12/21/2009	<u>FILED AND FEE</u>	

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ESTTA Tracking number: **ESTTA323200**Filing date: **12/21/2009**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	GFA Brands, Inc.
Granted to Date of previous extension	12/19/2009
Address	115 W. Century Rd.Suite 260 Paramus, NJ 07652 UNITED STATES
Attorney information	Patrick M. Bergin Davis & Kuelthau, s.c. 111 E. Kilbourn Ave.Suite 1400 Milwaukee, WI 53202 UNITED STATES pbergin@dkattorneys.com Phone:414-225-7563

**Applicant Information**

Application No	77620901	Publication date	10/20/2009
Opposition Filing Date	12/21/2009	Opposition Period Ends	12/19/2009
Applicant	Radlo Foods LLC 313 Pleasant Street Watertown, MA 02472 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 029.

Opposed goods and services in the class: eggs, milk; milk products, excluding ice cream, ices milk, and frozen yogurt; egg substitute; processed food products, namely, soy oils,

**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	2952127	Application Date	05/04/2001
Registration Date	05/17/2005	Foreign Priority Date	NONE
Word Mark	SMART BALANCE		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 030. First use: First Use: 2002/09/00 First Use In Commerce: 2002/09/00 Popped and Processed Popcorn


U.S. Registration No.	2276285	Application Date	07/01/1996
Registration Date	09/07/1999	Foreign Priority Date	NONE
Word Mark	SMART BALANCE		
Design Mark	<b>SMART BALANCE</b>		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1999/02/00 First Use In Commerce: 1999/02/00 mayonnaise [, lowfat and nonfat mayonnaise substitutes, mayonnaise style dressings and salad dressings]		

U.S. Registration No.	2200663	Application Date	07/01/1996
Registration Date	10/27/1998	Foreign Priority Date	NONE
Word Mark	SMART BALANCE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1996/10/00 First Use In Commerce: 1996/10/00 butter substitutes, cheese, lowfat [ and nonfat ] cheese [ substitutes, ] margarine, [ lowfat and nonfat margarine substitutes, ] shortening, lowfat and nonfat shortening, [ snack food dips ] and vegetable oils		


U.S. Registration No.	3649833	Application Date	07/01/2008
Registration Date	07/07/2009	Foreign Priority Date	NONE
Word Mark	SMART BALANCE		
Design Mark	<b>SMART BALANCE</b>		
Description of Mark	NONE		

Goods/Services	Class 029. First use: First Use: 2005/10/00 First Use In Commerce: 2005/10/00 Peanut butter		
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U.S. Registration No.	2958216	Application Date	07/09/2003
Registration Date	05/31/2005	Foreign Priority Date	NONE
Word Mark	SMART BALANCE OMEGA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2003/08/00 First Use In Commerce: 2003/08/00 Butter substitutes, cheese, lowfat and nonfat cheese substitutes, margarine, lowfat and nonfat margarine substitutes, shortening, lowfat and nonfat shortening, snack food dips and vegetable oils		

U.S. Application No.	77200582	Application Date	06/07/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	SMART BALANCE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: cream cheese, milk, butter, egg substitute, creamer, half and half, sour cream, dips, yogurt		

U.S. Application No.	77566103	Application Date	09/09/2008
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	SMART BALANCE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 029. First use: First Use: 2009/03/14 First Use In Commerce: 2009/04/00 Eggs

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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/Patrick M. Bergin/
Name	Patrick M. Bergin
Date	12/21/2009



5. GFA filed an intent-to-use trademark application, Serial No. 77/200,582, for the mark SMART BALANCE in International Class 29 on June 7, 2007 for use in connection with certain food products including milk, egg substitutes and other dairy products.

6. GFA received a Notice of Allowance in Serial No. 77/200,582 for its mark SMART BALANCE on March 25, 2008.

7. GFA has adopted and continuously used the SMART BALANCE mark as a trademark for use in connection with eggs in interstate commerce since 2008.

8. GFA has developed significant common law interest in and rights to the SMART BALANCE mark as trademark for use in connection with eggs.

9. GFA filed an intent-to-use trademark application, Serial No. 77/566,103 for its SMART BALANCE mark on September 9, 2008 for use in connection with eggs.

10. GFA received a Notice of Allowance in connection with application Serial No. 77/566,103 for its SMART BALANCE mark on April 28, 2009.

11. Applicant filed its trademark application to register the name SMART GOODNESS on November 24, 2008, well after GFA filed Serial Nos. 77/566,103 and 77/200,582.

12. Opposer has, for many years, been engaged in the business of the manufacture, sale, distribution and promotion of food products throughout the United States, including vegetable oil, eggs and milk. Opposer's products have been extensively advertised and promoted throughout the United States, and through such efforts, Opposer has built up substantial good will and consumer recognition of its products through its trademarks.

13. Notwithstanding Opposer's prior rights in and to the SMART BALANCE trademark, Applicant has filed an application, Serial No.: 77/620,901 for registration of the name


SMART GOODNESS for eggs, milk, milk product, egg substitutes and soy oils, among other things in International Class 29.

14. The Applicant's SMART GOODNESS name is confusingly similar to the trademarks of Opposer and its use by Applicant on the goods stated in its application is likely to cause confusion, deception and mistake. Applicant's registration or use of the SMART GOODNESS name interferes with Opposer's use of its mark and continued use or registration of the SMART GOODNESS name by Applicant will seriously damage Opposer.

15. Opposer has written to Applicant's listed attorney of record requesting that Applicant not adopt or use the SMART GOODNESS name and to abandon its application for federal registration. Applicant has not agreed to discontinue using the SMART GOODNESS name or to withdraw its application Serial No. 77/620,901.

WHEREFORE, Opposer requests that Application Serial No. 77/620,901 be refused registration; that no registration be issued to Applicant for the mark identified in Application Serial No. 77/620,901; and that this opposition be sustained in favor of Opposer.

Respectfully submitted,

By   
Joseph S. Heino  
DAVIS & KUELTHAU, s.c.  
111 E. Kilbourn Ave., Ste. 1400  
Milwaukee, WI 53202-1633  
(414) 225-1452

Patrick M. Bergin  
DAVIS & KUELTHAU, s.c.  
111 E. Kilbourn Ave., Ste. 1400  
Milwaukee, WI 53202-1633  
(414) 225-7563

Dated: December 21, 2009





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## TTABVue. Trademark Trial and Appeal Board Inquiry System

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**Opposition****Number:** 91185689**Filing Date:** 08/06/2008**Status:** Terminated**Status Date:** 12/02/2008**Interlocutory Attorney:** ANGELA LYKOS**Defendant****Name:** Healthy Delight Foods LLC**Correspondence:** MARK J. NAHNSEN

BARNES &amp; THORNBURG LLP

PO BOX 2786

CHICAGO, IL 60690-2786

UNITED STATES

mnahnsen@btlaw.com

**Serial #:** 77311803Application File**Application Status:** Abandoned - After Inter-Partes Decision**Mark:** SMART@HEART**Plaintiff****Name:** GFA Brands, Inc.**Correspondence:** John L. Ambrogi

HUSCH BLACKWELL SANDERS WELSH &amp; KATZ

120 South Riverside Plaza 22nd Floor, Suite 2200

Chicago, IL 60606

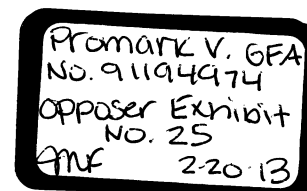
UNITED STATES

jladocket@welshkatz.com

**Serial #:** 75127811Application File**Registration #:** 2276285**Application Status:** Renewed**Mark:** SMART BALANCE**Granted To Date:** 08/06/2008**Prosecution History**

#	Date	History Text	Due Date
6	12/02/2008	TERMINATED	
5	12/02/2008	<u>BOARD'S DECISION: SUSTAINED</u>	
4	10/15/2008	<u>NOTICE OF DEFAULT</u>	
3	08/07/2008	PENDING, INSTITUTED	
2	08/07/2008	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	09/16/2008
1	08/06/2008	<u>FILED AND FEE</u>	

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ESTTA Tracking number: **ESTTA228868**Filing date: **08/06/2008**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	GFA Brands, Inc.
Granted to Date of previous extension	08/06/2008
Address	115 West Century Road Paramus, NJ 07652 UNITED STATES

Attorney information	John L. Ambrogi Welsh & Katz, Ltd. 120 South Riverside Plaza Suite 2200 Chicago, IL 60606 UNITED STATES jladocket@welshkatz.com Phone: 312-655-1500
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**Applicant Information**

Application No	77311803	Publication date	04/08/2008
Opposition Filing Date	08/06/2008	Opposition Period Ends	08/06/2008
Applicant	Healthy Delight Foods LLC 8S070 Greene Road Naperville, IL 60540 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 030. All goods and services in the class are opposed, namely: Mayonnaise
-----------------------------------------------------------------------------------

**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Mark Cited by Opposer as Basis for Opposition**

U.S. Registration No.	2276285	Application Date	07/01/1996
Registration Date	09/07/1999	Foreign Priority Date	NONE
Word Mark	SMART BALANCE		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 030. First use: First Use: 1999/02/00 First Use In Commerce: 1999/02/00 mayonnaise, lowfat and nonfat mayonnaise substitutes, mayonnaise style dressings and salad dressings
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Attachments	75127811#TMSN.gif ( 1 page )( bytes ) FINAL Notice of Opposition.pdf ( 3 pages )(15257 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/jla/
Name	John L. Ambrogi
Date	08/06/2008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

GFA BRANDS, INC.,	)	Opposition No.
	)	
Opposer,	)	Application Serial No.: 77/311803
	)	
vs.	)	Published: April 8, 2008
	)	
HEALTHY DELIGHT FOODS LLC	)	Mark: SMART@HEART

NOTICE OF OPPOSITION

Opposer GFA Brands, Inc. ("GFA"), a Delaware corporation having its principal place of business at 115 West Century Road, Suite 260, Paramus, NJ 07652 believes that it will be damaged by Applicant's registration of the mark SMART@HEART, shown as United States Trademark Application Serial No.: 77/311803 (published in the official Gazette of the United States Patent and Trademark Office on April 8, 2008), and opposes the same on the following grounds.

1. GFA is the owner of United States Trademark Registration Nos.: 2,952,127; 2,276,285 and 2,200,663 For SMART BALANCE for certain food products, including mayonnaise.
2. GFA is the owner of United States Trademark Registration No. 2,182,820 for SMART OIL for certain food products.
3. GFA is the owner of United States Trademark Registration No.: 2,302,961 for SMART COW for certain food products.
4. GFA is the owner of United States Trademark Registration No.: 1,836,307 for SMART SPREAD for certain food products.
5. GFA is the owner of United States Trademark Registration 2,084,664 for SMART SQUEEZE for certain food products.

6. GFA is the owner of the United States Trademark Registration No.: 1,754,419 for SMART BEAT for certain food products.

7. GFA is the owner of the United States Registration Nos.: 2,045,728 and 1,933,384 for SMART SLICES for certain food products.

8. GFA is the owner of the United States Registration Trademark No. 1,810,146 for SMART MAYO for certain food products.

9. GFA is the owner of United States Trademark Registration No. 2,958,216 for SMART BALANCE OMEGA.

10. Opposer, has for many years been engaged in the business of *inter alia*, the manufacture, sale, distribution and promotion of food products throughout the United States, including mayonnaise and peanut butter. Opposer's products have been extensively advertised and promoted throughout the United States, and through such efforts, Opposer has built up substantial good will and consumer recognition of its products through its trademarks.

11. Notwithstanding Opposer's prior rights in and to the above-identified trademark registration, Application has filed an application, Serial No.: 77/311803 for registration of SMART@HEART for peanut butter in International Class 29 and mayonnaise in International Class 30.

12. The Applicant's SMART@HEART mark is confusingly similar to the trademarks of Opposer and its use by Applicant on the goods stated in its application is likely to cause confusion, deception and mistake. Applicant's registration or use of SMART@HEART interferes with Opposer's use of its mark and continued use or registration of SMART@HEART by Applicant will seriously damage Opposer.

13. Opposer has written to Applicant's listed attorney of record requesting that Applicant not adopt or use SMART@HEART and to abandon its application for federal registration.

Applicant has not agreed to discontinue using the SMART@HEART mark or to withdraw its application Serial No. 77/311803.

WHEREFORE, Opposer requests that Application Serial No. 77/311803 be refused registration; that no registration be issued to Applicant for the 77/311803 mark; and that this opposition be sustained in favor of Opposer.

Respectfully submitted,

GFA BRANDS, INC.

By: /s/ John L. Ambrogi  
John L. Ambrogi, Esq.  
HUSCH BLACKWELL SANDERS  
WELSH & KATZ  
120 South Riverside Plaza  
22<sup>nd</sup> Floor  
Chicago, Illinois 60606  
(312) 655-1500

Attorneys for Opposer

Dated: August 6, 2008



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## TTABVue. Trademark Trial and Appeal Board Inquiry System

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## Opposition

**Number:** 91183204**Filing Date:** 03/26/2008**Status:** Terminated**Status Date:** 09/21/2008**Interlocutory Attorney:** ELIZABETH WINTER

## Defendant

**Name:** Conagra Foods RDM, Inc.

**Correspondence:** CHRISTOPHER M. BIKUS  
 MCGRATH, NORTH, MULLIN & KRATZ, PC LLO  
 FIRST NATIONAL TOWER, 1601 DODGE STREET, SUITE 3700  
 OMAHA, NE 68102  
 UNITED STATES  
 cbikus@mcgrathnorth.com

**Serial #:** 77096048      Application File**Registration #:** 3651641**Application Status:** Registered**Mark:** SMARTCAKES!

## Plaintiff

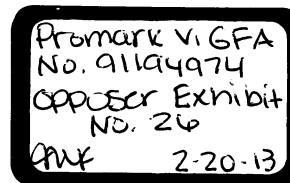
**Name:** GFA Brands, Inc.

**Correspondence:** John L. Ambrogi  
 Welsh & Katz, Ltd.  
 120 S. Riverside Plaza, 22nd Floor  
 Chicago, IL 60606  
 UNITED STATES  
 jladocket@welshkatz.com

**Serial #:** 76252358      Application File**Registration #:** 2952127**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** SMART BALANCE

## Prosecution History

#	Date	History Text	Due Date
10	09/21/2008	TERMINATED	
9	09/21/2008	<u>BD'S DECISION: DISMISSED W/ PREJUDICE</u>	
8	09/11/2008	<u>P'S CERTIFICATE OF SERVICE FOR WITHDRAWAL OF OPPOSITION</u>	
7	09/10/2008	<u>WITHDRAWAL OF OPPOSITION</u>	
6	08/13/2008	<u>AMDT APPROVED; PL'S RESPONSE DUE 9/12/08</u>	
5	07/10/2008	<u>MOTION TO AMEND APPLICATION</u>	
4	05/05/2008	<u>ANSWER</u>	
3	03/26/2008	PENDING, INSTITUTED	
2	03/26/2008	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	
1	03/26/2008	<u>FILED AND FEE</u>	



05/05/2008





ESTTA Tracking number: **ESTTA200910**Filing date: **03/26/2008**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	GFA Brands, Inc.
Granted to Date of previous extension	03/26/2008
Address	115 West Century Road Suite 260 Paramus, NJ 07652 UNITED STATES
Attorney information	John L. Ambrogi Welsh & Katz, Ltd. 120 S. Riverside Plaza22nd Floor Chicago, IL 60606 UNITED STATES jladocket@welshkatz.com Phone:312-655-1500

**Applicant Information**

Application No	77096048	Publication date	11/27/2007
Opposition Filing Date	03/26/2008	Opposition Period Ends	03/26/2008
Applicant	CONAGRA FOODS RDM, INC. ONE CONAGRA DRIVE OMAHA, NE 68102 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 030. All goods and services in the class are opposed, namely: Ready-to-eat popcorn products, namely, popped popcorn, popcorn cakes, and popcorn balls
----------------------------------------------------------------------------------------------------------------------------------------------------------------

**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Mark Cited by Opposer as Basis for Opposition**

U.S. Registration No.	2952127	Application Date	05/04/2001
Registration Date	05/17/2005	Foreign Priority Date	NONE
Word Mark	SMART BALANCE		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 030. First use: First Use: 2002/09/00 First Use In Commerce: 2002/09/00 Popped and Processed Popcorn

Attachments	Notice of Opposition Re Smartcakes!.pdf ( 2 pages )(13917 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/jla/
Name	John L. Ambrogi
Date	03/26/2008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

GFA BRANDS, INC.,	)	Opposition No.
	)	
Opposer,	)	Application Serial No.: 77/096048
	)	
vs.	)	Published: November 27, 2007
	)	
CONAGRA FOODS RDM, INC.	)	Mark: SMARTCAKES!
	)	
Applicant.	)	

NOTICE OF OPPOSITION

Opposer GFA Brands, Inc. (“GFA”), an Ohio corporation, having its principal of business at 115 West Century Road, Suite 260, Paramus, NJ 07652 believes that it will be damaged by Applicant’s registration of the mark SMARTCAKES!, shown in United States Trademark Application Serial No.: 77/096048 (published in the Official Gazette of the United States Patent and Trademark Office on November 27, 2007), and opposes the same on the following grounds.

1. GFA is the owner of United States Trademark Registration No.: 2,952,127 and for SMART BALANCE for popped and processed popcorn.
2. Opposer has for many years been engaged in the business of, *inter alia*, the manufacture, sale, distribution and promotion of food products throughout the United States. Opposer’s products have been extensively advertised and promoted throughout the United States, and through such efforts, Opposer has built up substantial good will and consumer recognition of its products through its trademarks.

3. Notwithstanding Opposer's prior rights in and to the above-identified trademark registration, Applicant has filed an application, Serial No. 77/096048 for registration of SMARTCAKES! for "ready-to-eat popcorn" products in International Class 30.

4. The Applicant's SMARTCAKES! mark is confusingly similar to the trademark of Opposer and its use by Applicant on the goods stated in its application is likely to cause confusion, deception and mistake. Applicant's registration or use of SMARTCAKES! interferes with Opposer's use of its marks and continued use or registration of SMARTCAKES! by Applicant will seriously damage Opposer.

5. Applicant has refused to agree to discontinue using the SMARTCAKES! mark or to withdraw its application Serial No. 77/096048.

WHEREFORE, Opposer requests that Application's Serial No. 77/096048 be refused registration; that no registration be issued to Applicant for the 77/096048 mark; and that this opposition be sustained in favor of Opposer.

Respectfully submitted,

GFA BRANDS, INC.

March 26, 2008

By: /s/ John L. Ambrog  
John L. Ambrog, Esq.  
WELSH & KATZ, LTD.  
120 South Riverside Plaza,  
22<sup>nd</sup> Floor  
Chicago, Illinois 60606  
(312) 655-1500

Attorneys for Opposers



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## TTABVUE. Trademark Trial and Appeal Board Inquiry System

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## Opposition

**Number:** 91166719**Filing Date:** 09/23/2005**Status:** Terminated**Status Date:** 03/07/2006**Interlocutory Attorney:** GEORGE POLOGEORGIS

## Defendant

**Name:** ConAgra Brands, Inc.**Correspondence:** PATRICK C. STEPHENSON

MCGRATH NORTH MULLIN &amp; KRATZ, PC LLO

SUITE 3700 FIRST NATIONAL TOWER 1601 DODGE STREET

OMAHA, NE 68102

**Serial #:** 76595938Application File**Registration #:** 3187765**Application Status:** Registered**Mark:** SMART CHILI

## Plaintiff

**Name:** GFA Brands, Inc.**Correspondence:** JOHN L. AMBROGI,

WELSH &amp; KATZ, LTD.,

120 S RIVERSIDE PLZ FL 22

CHICAGO, IL 60606-3913

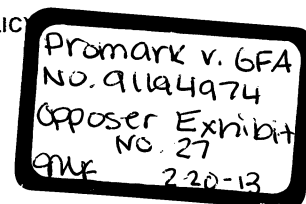
**Serial #:** 76252358Application File**Registration #:** 2952127**Application Status:** Section 8 and 15 - Accepted and Acknowledged**Mark:** SMART BALANCE

## Prosecution History

#	Date	History Text	Due Date
7	03/07/2006	TERMINATED	
6	03/07/2006	<u>BD'S DECISION: DISMISSED W/ PREJUDICE</u>	
5	02/09/2006	<u>WITHDRAWAL OF OPPOSITION</u>	
4	11/04/2005	<u>ANSWER</u>	
3	09/29/2005	PENDING, INSTITUTED	
2	09/29/2005	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	11/08/2005
1	09/23/2005	<u>FILED AND FEE</u>	

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# WELSH & KATZ, LTD.

*Attorneys at Law*

120 SOUTH RIVERSIDE PLAZA • 22ND FLOOR  
CHICAGO, ILLINOIS 60606-3912

TELEPHONE (312) 655-1500  
FACSIMILE (312) 655-1501

www.welshkatz.com

September 14, 2005

A. SIDNEY KATZ\*  
RICHARD L. WOOD\*  
JEROLD B. SCHNAYER  
JOSEPH R. MARCUS  
GERALD S. SCHUR  
GERALD T. SHEKLETON  
JAMES A. SCHEER  
DANIEL R. CHERRY  
ROBERT B. BREISBLATT  
JAMES P. WHITE  
R. MARK HALLIGAN  
HARTWELL P. MORSE, III  
EDWARD P. GAMSON, Ph.D.  
KARA E.F. CENAR  
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THOMAS W. TOLPIN\*  
RICHARD W. McLAREN, JR.  
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JOHN L. AMBROGI  
JULIE A. KATZ  
JON P. CHRISTENSEN  
WALTER J. KAWULA, JR.  
LEONARD FRIEDMAN  
STEVEN E. FELDMAN  
JEFFREY W. SALMON  
THOMAS L. GEMMELL  
LOUISE T. WALSH

PAUL M. VARGO, Ph.D.  
JOSEPH E. Cwik  
J. ARON CARNAHAN  
ERIK B. FLOM, Ph.D.

RICHARD J. GURAK  
DANIEL M. GURFINKEL  
MICHELE S. KATZ\*  
NATALIE A. REMIEN  
BRIAN J. SODIKOFF  
BRETT M. TOLPIN  
GEORGE S. PAVLIK  
MICHAEL A. KROL, Ph.D.  
SHERRY L. ROLLO  
CHRISTOPHER K. MARLOW  
MAITREYA P. JANI  
CRAIG M. KUCHII

OF COUNSEL  
LAURIE A. HAYNIE  
JAMES J. MYRICK  
THOMAS R. VIGIL  
PHILIP D. SEGREST, JR.\*\*  
WALLACE L. OLIVER, Ph.D.  
LAURA A. LABEOTS, Ph.D.

DONALD L. WELSH (1925-1998)

\* ALSO ADMITTED IN DISTRICT OF COLUMBIA  
\*\* ALSO ADMITTED IN ALABAMA

Commissioner for Trademarks  
P.O. Box 1451  
Arlington, VA 22313-1451



09-19-2005

U.S. Patent & TMO/TM Mail Rcpt Dt. #11

Re: Notice of Opposition  
Mark: Smart Chili  
Application Serial No.: 76/595938  
Published: May 17, 2005

Sir:

Enclosed herewith are the following:

1. Notice of Opposition (in triplicate);
2. Postcard.

The Commissioner is hereby authorized to charge the requisite filing fee of \$300 for the Opposition to **Deposit Account No. 230920**. A duplicate copy of this sheet is enclosed.

Sincerely,

WELSH & KATZ, LTD.

By

John L. Ambrogi

JLA/skb  
Enclosures

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

GFA BRANDS, INC.,	)	Opposition No.
	)	
Opposer,	)	Application Serial No.: 76/595938
	)	
vs.	)	Published: May 17, 2005
	)	
ConAgra Brands, Inc.	)	Mark: SMART CHILI
	)	
Applicant.	)	



09-19-2005

U.S. Patent &amp; TMO/TM Mgr Rpt Dt. #11

**NOTICE OF OPPOSITION**

Opposer, GFA Brands, Inc. ("GFA"), a Delaware corporation having a business address at 211 Knickerbocker Road, Cresskill, New Jersey 07626-0397 believes that it will be damaged by Applicant's registration of the mark SMART CHILI, United States Trademark Application Serial No.: 76/595938, on the following grounds:

1. Opposer has for many years been engaged in the business of, *inter alia*, the manufacture, sale, distribution and promotion of food products throughout the United States. Opposer's products have been advertised and promoted throughout the United States, and through such efforts, Opposer has built up substantial good will and consumer recognition of its products through its trademarks.

2. GFA is the owner of United States Trademark Registration Nos.: 2,952,127; 2,276,285 and 2,200,663 for SMART BALANCE for certain food products.

3. GFA is the owner of United States Trademark Registration No. 2,182,820 for SMART OIL for certain food products.

09/21/2005 SHILSON1 00000014 230920 76595938

4. GFA is the owner of United States Trademark Registration No. 2,302,961 for SMART COW for certain food products.

01 FC:6402

300.00 DA

5. GFA is the owner of United States Registration No. 1,836,307 for SMART SPREAD for certain food products.

6. GFA is the owner of United States Trademark Registration No. 2,084,664 for SMART SQUEEZE for certain food products.

7. GFA is the owner of United States Trademark Registration No. 1,754,419 for SMART BEAT for certain food products.

8. GFA is the owner of the United States Trademark Registration Nos. 2,045,728 and 1,933,384 for SMART SLICES for certain food products.

9. GFA is the owner of United States Trademark Registration No. 1,810,146 for SMART MAYO for certain food products.

10. GFA is the owner of United States Trademark Registration No. 2,958,216 for SMART BALANCE OMEGA.

11. Notwithstanding Opposer's prior rights in and to the above-identified trademark registrations, Applicant has filed an intent to use application, Serial No. 76/595938, for registration of SMART CHILI for "vegetable based meat substitutes and frozen entrees containing vegetable based meat substitutes" in International Class 29.

12. Opposer has written to Applicant's listed attorney of record requesting that Applicant not adopt or use SMART CHILI and to abandon its application for federal registration. Applicant has refused to agree to discontinue using the SMART CHILI mark or to withdraw its application Serial No. 76/595938.

13. The Applicant's SMART CHILI mark is confusingly similar to the trademarks of Opposer and its use by Applicant on the goods stated in its application is likely to cause confusion, deception and mistake. Applicant's registration or use of SMART CHILI interferes with Opposer's use of



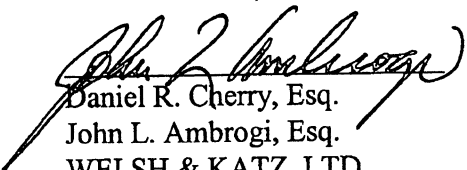
their marks and continued use or registration of SMART CHILI by Applicant will seriously damage Opposer.

**WHEREFORE**, Opposer request that Application Serial No. 76/595938 be refused registration; that no registration be issued to Applicant for the SMART CHILI mark; and that this opposition be sustained in favor of Opposer.

Dated: September 14, 2005

Respectfully submitted,

GFA BRANDS, INC.



Daniel R. Cherry, Esq.

John L. Ambrogio, Esq.

WELSH & KATZ, LTD.

120 South Riverside Plaza,

22<sup>nd</sup> Floor

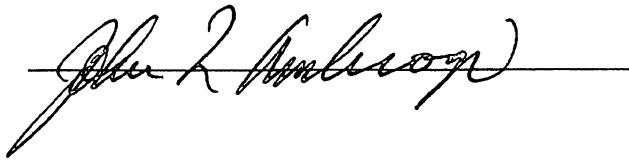
Chicago, Illinois 60606

(312) 655-1500

Attorneys for Opposer

CERTIFICATE OF MAILING

I hereby certify that this Notice of Opposition, including any enclosures is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner For Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451 on September 14, 2005.

A handwritten signature in cursive script, appearing to read "John R. Amberson", is written over a horizontal line.



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## Opposition

**Number:** 91162269**Filing Date:** 09/24/2004**Status:** Terminated**Status Date:** 04/24/2005**Interlocutory Attorney:** ANGELA LYKOS

## Defendant

**Name:** Ripon Foods, Inc.**Correspondence:** Mark A. Paskar  
Bryan Cave LLP  
211 North Broadway Suite 3600  
St. Louis MO U, SA 63102-2750**Serial #:** 78198463[Application File](#)**Application Status:** Abandoned - After Inter-Partes Decision**Mark:** SMART BAKE

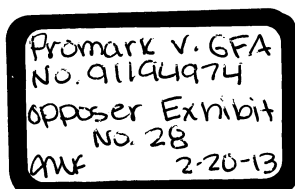
## Plaintiff

**Name:** GFA Brands, Inc.**Correspondence:** John L. Ambrogi  
Welsh & Katz, Ltd.  
120 South Riverside Plaza 22nd Floor  
Chicago, IL 60606  
UNITED STATES  
jladoocket@welshkatz.com**Serial #:** 75977525[Application File](#)**Registration #:** 2200663**Application Status:** Renewed**Mark:** SMART BALANCE**Granted To Date:** 09/26/2004

## Prosecution History

#	Date	History Text	Due Date
6	04/24/2005	TERMINATED	
5	04/24/2005	<u>BOARD'S DECISION: SUSTAINED</u>	
4	03/12/2005	<u>NOTICE OF DEFAULT</u>	
3	09/25/2004	PENDING, INSTITUTED	
2	09/25/2004	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	11/04/2004
1	09/24/2004	<u>FILED AND FEE</u>	

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ESTTA Tracking number: **ESTTA15757**

Filing date: **09/24/2004**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

### Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

#### Opposer Information

<b>Name</b>	GFA Brands, Inc.
<b>Granted to Date of previous extension</b>	09/26/2004
<b>Address</b>	GFA Brands, Inc. 211 Knickerbocker Road P.O. Box 397 Cresskill, NJ 07626 UNITED STATES

<b>Attorney information</b>	John L. Ambrogi Welsh & Katz, Ltd. 120 South Riverside Plaza 22nd Floor Chicago, IL 60606 UNITED STATES jladoCKET@welshkatz.com Phone:312-655-1500
-----------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------

#### Applicant Information

<b>Application No</b>	78198463	<b>Publication date</b>	03/30/2004
<b>Opposition Filing Date</b>	09/24/2004	<b>Opposition Period Ends</b>	09/26/2004
<b>Applicant</b>	Ripon Foods, Inc.		

**Goods/Services Affected by Opposition**

Class 030.

All goods and services in the class are opposed, namely: Cookies

<b>Attachments</b>	Notice of Opposition For Smart Bake.txt ( 2 pages )
--------------------	-----------------------------------------------------

<b>Signature</b>	/jla/
<b>Name</b>	John L. Ambrogi
<b>Date</b>	09/24/2004

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

GFA BRANDS, INC.,	)	Opposition No.
	)	
Opposer,	)	Application Seri
al No.: 78/198463	)	
	)	
vs.	)	Published: May
30, 2004	)	
	)	
Rippon Foods, Inc.	)	Mark: SMART BA
KE	)	
	)	
Applicant.	)	

NOTICE OF OPPOSITION

Opposer, GFA Brands, Inc. ("GFA"), a Delaware corporation having a business

address at 211 Knickerbocker Road, Cresskill, New Jersey 07626-0397 believes that it will

be damaged by Applicant's registration of the mark SMART BAKE, United States

Trademark Application Serial No.: 78/198463, on the following grounds:

1. Opposer has for many years been engaged in the business of, inte  
r

alia, the manufacture,  
sale, distribution and promotion of food products throughout the United States. Opposer's products  
have been advertised and promoted throughout the United States, and  
through such efforts, Opposer  
has built up substantial good will and consumer recognition of its  
products through its trademarks.

2. GFA is the owner of United States Trademark Registration Nos.:  
2,276,285 and 2,200,663  
for SMART BALANCE for certain food products.

3. GFA is the owner of United States Trademark Registration No.  
2,182,820 for SMART OIL  
for certain food products.

4. GFA is the owner of United States Trademark Registration No.  
2,302,961 for SMART  
COW for certain food products.

5. GFA is the owner of United States Registration No. 1,836,307 for  
SMART SPREAD for  
certain food products.

6. GFA is the owner of United States Trademark Registration No.  
2,084,664 for SMART  
SQUEEZE for certain food products.

7. GFA is the owner of United States Trademark Registration No.  
1,754,419 for SMART  
BEAT for certain food products.

8. GFA is the owner of the United States Trademark Registration Nos  
.  
2,045,728 and

1,933,384 for SMART SLICES for certain food products.

9. GFA is the owner of United States Trademark Registration No.

1,810,146 for SMART

MAYO for certain food products.

10. Notwithstanding Opposer's prior rights in and to the above-identified trademark registrations, Applicant has filed an intent to use application, Serial No. 78/198463, for registration of SMART BAKE for "cookies" in International Class 30.

11. Opposer has written to Applicant's listed attorney of record requesting that Applicant not adopt or use SMART BAKE and to abandon its application for federal registration. Applicant has refused to agree to discontinue using the SMART BAKE mark or to withdraw its application Serial No. 78/198463.

12. The Applicant's SMART BAKE mark is confusingly similar to the trademarks of Opposer and its use by Applicant on the goods stated in its application is likely to cause confusion, deception and mistake. Applicant's registration or use of SMART BAKE interferes with Opposer's use of their marks and continued use or registration of SMART BAKE by Applicant will seriously damage Opposer.

WHEREFORE, Opposer request that Application Serial No. 78/198463 be refused registration; that no registration be issued to Applicant for the SMART BAKE mark; and that this opposition be sustained in favor of Opposer.  
Respectfully submitted,  
GFA BRANDS, INC.

\_\_\_\_\_  
, Esq.

Esq.

kel, Esq.

D.

ide Plaza,

s 60606

poser

3

\_\_\_\_\_  
Daniel R. Cherry

John L. Ambrogio,

Daniel J. Gurfin

WELSH & KATZ, LT

120 South Rivers

22nd Floor  
Chicago, Illinois

(312) 655-1500  
Attorneys for Op



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## TTABVUE. Trademark Trial and Appeal Board Inquiry System

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**Opposition****Number:** 91153369**Filing Date:** 09/05/2002**Status:** Terminated**Status Date:** 11/19/2002**Interlocutory Attorney:** ALBERT J ZERVAS**Defendant****Name:** CONAGRA BRANDS, INC.**Correspondence:** PATRICK C. STEPHENSON

MCGRATH, NORTH, MULLIN &amp; KRATZ, P.C.

1400 ONE CENTRAL PARK PLAZA OMAHA, NE 68102

**Serial #:** 76111754Application File**Application Status:** Abandoned - No Statement Of Use Filed**Mark:** SMART NUGGETS**Plaintiff****Name:** FITNESS FOODS, INC., AND GFA BRANDS.**Correspondence:** DANIEL R. CHERRY

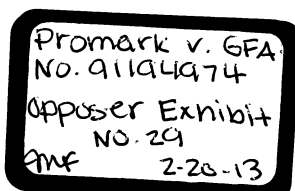
WELSH &amp; KATZ, LTD.

120 SOUTH RIVERSIDE PLAZA, 22ND FLOOR CHICAGO, IL 60606

**Serial #:** 75127811Application File**Registration #:** 2276285**Application Status:** Renewed**Mark:** SMART BALANCE**Prosecution History**

#	Date	History Text	Due Date
5	11/19/2002	TERMINATED	
4	11/19/2002	<u>OPPOSITION IS NULL AND VOID AND IT IS DI SMISSED</u>	
3	11/07/2002	PENDING, INSTITUTED	
2	11/07/2002	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	12/17/2002
1	09/05/2002	<u>FILED AND FEE</u>	

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Mark: SMART NUGGETS

9/5-602 - Alumma  
Date  
Express Mail Label No.  
EL77998886545

09/12/2002 MPETTY 00000146 76111754  
01 FC:377 600.00 DP

2. GFA is the owner of United States Trademark Registration Nos.: 2,276,285 and 2,200,663 for SMART BALANCE for certain food products.

3. GFA is the owner of United States Trademark Registration No. 2,182,820 for SMART OIL for certain food products.

4. GFA is the owner of United States Trademark Registration No. 2,302,961 for SMART COW for certain food products.

5. Fitness is the owner of United States Registration No. 1,836,307 for SMART SPREAD for certain food products.

6. Fitness is the owner of United States Trademark Registration No. 2,084,664 for SMART SQUEEZE for certain food products.

7. Fitness is the owner of United States Trademark Registration No. 1,754,419 for SMART BEAT for certain food products.

8. Fitness is the owner of the United States Trademark Registration Nos. 2,045,728 and 1,933,384 for SMART SLICES for certain food products.

9. Fitness is the owner of United States Trademark Registration No. 1,810,146 for SMART MAYO for certain food products.

10. Opposers have made use of the aforementioned SMART BALANCE, SMART OIL, SMART BEAT, SMART MAYO, SMART SPREAD, SMART SLICES, SMART COW and SMART SQUEEZE marks through their related companies.

11. Notwithstanding Opposers' prior rights in and to the above-identified trademark registrations, Applicant has filed an application, Serial No. 76/111,754 <sup>B</sup> for registration of SMART NUGGETS for "soy based products used as meat substitutes" in International Class 29.

12. Opposer has written to Applicant's listed attorney of record requesting that Applicant not adopt or use SMART NUGGETS and to abandon its application for federal registration. Applicant has refused to agree to discontinue using the SMART NUGGETS mark or to withdraw its application Serial No. 76/111,754.

13. The Applicant's SMART NUGGETS mark is confusingly similar to the trademarks of Opposers and its use by Applicant on the goods stated in its application is likely to cause confusion, deception and mistake. Applicant's registration or use of SMART NUGGETS interferes with Opposers' use of their marks and continued use or registration of SMART NUGGETS by Applicant will seriously damage Opposers.

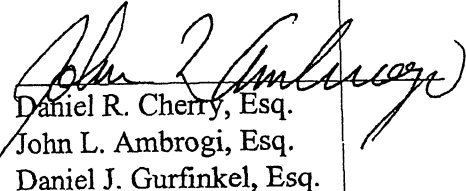
**WHEREFORE**, Opposers request that Application's Serial No. 76/111,754 be refused registration; that no registration be issued to Applicant for the SMART NUGGETS mark; and that this opposition be sustained in favor of Opposers.

Respectfully submitted,

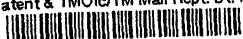
FITNESS FOODS, INC. and  
GFA BRANDS, INC.

September 5, 2002

By:

  
Daniel R. Cherry, Esq.  
John L. Ambrogi, Esq.  
Daniel J. Gurfinkel, Esq.  
WELSH & KATZ, LTD.  
120 South Riverside Plaza  
22<sup>nd</sup> Floor  
Chicago, Illinois 60606  
(312) 655-1500

Attorneys for Opposers



09-05-2002

# WELSH & KATZ, LTD.

*Attorneys at Law*

120 SOUTH RIVERSIDE PLAZA • 22ND FLOOR  
CHICAGO, ILLINOIS 60606-3912

TELEPHONE (312) 655-1500  
FACSIMILE (312) 655-1501

www.welshkatz.com

September 5, 2002

A. SIDNEY KATZ\*  
RICHARD L. WOOD\*  
JEROLD B. SCHNAYER  
ERIC C. COHEN  
JOSEPH R. MARCUS  
GERALD S. SCHUR  
GERALD T. SHEKLETON  
JAMES A. SCHEER  
DANIEL R. CHERRY  
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JAMES P. WHITE  
R. MARK HALLIGAN  
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KARA E.F. CENAR  
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THOMAS W. TOLPIN\*  
ELLIOTT C. BANKENDORF  
RICHARD W. McLAREN, JR.  
JOHN L. AMBROGI  
JULIE A. KATZ  
JON P. CHRISTENSEN  
ERIC D. COHEN  
WALTER J. KAWULA, JR.  
PHILIP D. SEGREST, JR.  
MITCHELL J. WEINSTEIN  
LEONARD FRIEDMAN  
STEVEN E. FELDMAN  
JEFFREY W. SALMON

Box TTAB FEE

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202

I hereby certify that this paper is being  
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marks, 2900 Crystal Drive, Arlington, VA 22202  
on this date.  
9/5/02 *John L. Ambrogi*  
Date  
Express Mail Label  
EL77998886545

THOMAS L. GEMMELL  
LOUISE T. WALSH  
CHARLES R. KRIKORIAN, PH.D.  
PAUL M. VARGO, PH.D.

SHANNON L. NEBOLSKY, PH.D.  
RICHARD J. GURAK  
J. ARON CARNAHAN  
ERIK B. FLOM, PH.D.  
JOSEPH E. CWIK  
IRENE M. REININGER  
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INDIRA SALADI  
ANDREA B. ELLMAN  
MICHELE S. KATZ\*  
JOHN R. GARRETT  
NATALIE A. REMIEN  
KRISTA M. LEBARON

OF COUNSEL  
LAURIE A. HAYNIE  
JAMES J. MYRICK  
THOMAS R. VIGIL

DONALD L. WELSH (1925-1998)

ALSO ADMITTED IN DISTRICT OF COLUMBIA

02 SEP 17 PH 9:44

TRADEMARK TRIAL AND  
APPEAL BOARD

Re: Fitness Foods, Inc. and GFA Brands, Inc. v. ConAgra Brands, Inc.  
Application No.: 76/111,754  
Published: June 4, 2002  
Our File No.: 1428/74696

Sir:

Enclosed is an original and two (2) copies of a Notice of Opposition with regard to the above-referenced application and Welsh & Katz, Ltd Check Nos. 076741 (\$300) and 076742 (\$300) to cover the filing fee for filing the Notice of Opposition in the name Fitness Foods, Inc. and GFA Brands, Inc.

The Commissioner is hereby authorized to charge any additional fees which may be required or credit any overpayment to Deposit Account No. 23-0920. Should no proper payment be enclosed, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to the above-mentioned Deposit Account. Two duplicate copies of this letter are enclosed.

Very truly yours,

WELSH & KATZ, LTD.

By:

*John L. Ambrogi*  
John L. Ambrogi, Esq.

JLA/skb  
Enclosures



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**Opposition****Number:** 91152648**Filing Date:** 08/06/2002**Status:** Terminated**Status Date:** 07/07/2003**Interlocutory Attorney:** ALBERT J ZERVAS**Defendant****Name:** CONAGRA BRANDS, INC.**Correspondence:** PATRICK C. STEPHENSON

MCGRATH, NORTH, MULLIN &amp; KRATZ

222 South 15 St, 1400 ONE CENTRAL PARK PLZ

Omaha, NE 68102

**Serial #:** 76111751[Application File](#)**Application Status:** Abandoned - After Inter-Partes Decision**Mark:** SMART YOGURT**Plaintiff****Name:** FITNESS FOODS, INC., AND GFA BRANDS, INC**Correspondence:** JOHN L. AMBROGI

WELSH &amp; KATZ, LTD

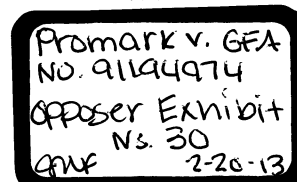
120 S RIVERSIDE PLZ, 22ND FL

Chicago, IL 60606

**Serial #:** 75127811[Application File](#)**Registration #:** 2276285**Application Status:** Renewed**Mark:** SMART BALANCE**Prosecution History**

#	Date	History Text	Due Date
9	07/07/2003	TERMINATED	
8	07/07/2003	<u>BOARD'S DECISION: SUSTAINED</u>	
7	05/01/2003	<u>EXP OF ABAND</u>	
6	03/31/2003	<u>STIPULATION NOTED AND APPROVED</u>	
5	02/27/2003	<u>P'S MOT FOR EXTEN. OF TIME W/ CONSENT</u>	
4	10/03/2002	<u>ANSWER</u>	
3	08/27/2002	PENDING, INSTITUTED	
2	08/27/2002	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	10/06/2002
1	08/06/2002	<u>FILED AND FEE</u>	

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08-06-2002

THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

FITNESS FOODS, INC., and  
GFA BRANDS, INC.,

Opposers,

vs.

ConAgra Brands, Inc.

Applicant.

Opposition No.

Application Serial No.: 76/111,751

Published: May 28, 2002

Mark: SMART YOGURT

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addressed to: Assistant Commissioner of Trade-  
marks, 2900 Crystal Drive, Arlington, VA 22202  
on this date.

8-6-02 *Paul J. Frank*  
Date

Express Mail Label No.

EL 90159640845

02 AUG 26 AM 12:34  
TRADEMARK TRIAL AND  
APPEAL BOARD

NOTICE OF OPPOSITION

Opposers, Fitness Foods, Inc. ("Fitness"), a Delaware corporation having a business address at P.O. Box 397, 211 Knickerbocker Road, Cresskill, New Jersey 07626-0397, and GFA Brands, Inc. ("GFA"), an Ohio corporation, having business at P.O. Box 397, 211 Knickerbocker Road, Cresskill, New Jersey 07626-0397, believe that they will be damaged by Applicant's registration of the mark SMART YOGURT, United States Trademark Application Serial No.: 76/111751, on the following grounds:

1. Opposers have for many years been engaged in the business of, *inter alia*, the manufacture, sale, distribution and promotion of food products throughout the United States. Opposers' products have been advertised and promoted throughout the United States, and through such efforts, Opposers have built up substantial good will and consumer recognition of its products through its trademarks.

2. GFA is the owner of United States Trademark Registration Nos.: 2,276,285 and 2,200,663 for SMART BALANCE for certain food products.

3. GFA is the owner of United States Trademark Registration No. 2,182,820 for SMART OIL for certain food products.

4. GFA is the owner of United States Trademark Registration No. 2,302,961 for SMART COW for certain food products.

5. Fitness is the owner of United States Registration No. 1,836,307 for SMART SPREAD for certain food products.

6. Fitness is the owner of United States Trademark Registration No. 2,084,664 for SMART SQUEEZE for certain food products.

7. Fitness is the owner of United States Trademark Registration No. 1,754,419 for SMART BEAT for certain food products.

8. Fitness is the owner of the United States Trademark Registration Nos. 2,045,728 and 1,933,384 for SMART SLICES for certain food products.

9. Fitness is the owner of United States Trademark Registration No. 1,810,146 for SMART MAYO for certain food products.

10. Opposers have made use of the aforementioned SMART BALANCE, SMART OIL, SMART BEAT, SMART MAYO, SMART SPREAD, SMART SLICES, SMART COW and SMART SQUEEZE marks through their related companies.

11. Notwithstanding Opposers' prior rights in and to the above-identified trademark registrations, Applicant has filed an application, Serial No. 76/111751 for registration of SMART YOGURT for "Soy based food products used as yogurt substitutes" in International Class 29.



---

12. Opposer has written to Applicant's listed attorney of record requesting that Applicant not adopt or use SMART YOGURT and to abandon its application for federal registration. Applicant has refused to agree to discontinue using the SMART YOGURT mark or to withdraw its application Serial No. 76/111751.

13. The Applicant's SMART YOGURT mark is confusingly similar to the trademarks of Opposers and its use by Applicant on the goods stated in its application is likely to cause confusion, deception and mistake. Applicant's registration or use of SMART YOGURT interferes with Opposers' use of their marks and continued use or registration of SMART YOGURT by Applicant will seriously damage Opposers.

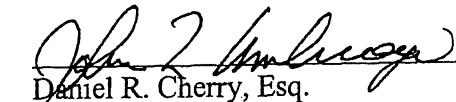
**WHEREFORE**, Opposers request that Application's Serial No. 76/111751 be refused registration; that no registration be issued to Applicant for the SMART YOGURT mark; and that this opposition be sustained in favor of Opposers.

Respectfully submitted,

FITNESS FOODS, INC. and  
GFA BRANDS, INC.

August 6, 2002

By:

  
Daniel R. Cherry, Esq.  
John L. Ambrogi, Esq.  
Daniel J. Gurfinkel, Esq.  
WELSH & KATZ, LTD.  
120 South Riverside Plaza,  
22<sup>nd</sup> Floor  
Chicago, Illinois 60606  
(312) 655-1500

Attorneys for Opposers

# WELSH & KATZ, LTD.

*Attorneys at Law*

120 SOUTH RIVERSIDE PLAZA • 22ND FLOOR  
CHICAGO, ILLINOIS 60606-3912

TELEPHONE (312) 655-1500  
FACSIMILE (312) 655-1501

www.welshkatz.com

August 6, 2002

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on this date.

8-6-02 *John L. Ambrogi*  
Date

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A. SIDNEY KATZ\*  
RICHARD L. WOOD\*  
JEROLD B. SCHNAYER  
ERIC C. COHEN  
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Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202

THOMAS L. GEMMELL  
LOUISE T. WALSH  
CHARLES R. KRIKORIAN, Ph.D.  
PAUL M. VARGO, Ph.D.

SHANNON L. NEBOLSKY, Ph.D.  
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NATALIE A. REMIEN

OF COUNSEL  
LAURIE A. HAYNIE  
JAMES J. MYRICK  
THOMAS R. VIGIL

DONALD L. WELSH (1925-1998)

\* ALSO ADMITTED IN DISTRICT OF COLUMBIA

U.S. Patent & TMOtc/TM Mail Rcpt. Dt. #57



08-06-2002

Re: Fitness Foods, Inc. and GFA Brands, Inc. v. ConAgra Brands, Inc.  
Application No.: 76/111,751  
Published: May 28, 2002  
Our File No.: 1428/74696

Sir:

Enclosed is an original and two (2) copies of a Notice of Opposition with regard to the above-referenced application and Welsh & Katz, Ltd Check No. 076028 in the amount of \$600.00 to cover the filing fee for filing the Notice of Opposition in the name Fitness Foods, Inc. and GFA Brands, Inc.

The Commissioner is hereby authorized to charge any additional fees which may be required or credit any overpayment to Deposit Account No. 23-0920. Should no proper payment be enclosed, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to the above-mentioned Deposit Account. Two duplicate copies of this letter are enclosed.

Very truly yours,

WELSH & KATZ, LTD.

By:

*John L. Ambrogi*  
John L. Ambrogi, Esq.

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## TTABVue. Trademark Trial and Appeal Board Inquiry System

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## Opposition

**Number:** 91152649**Filing Date:** 08/06/2002**Status:** Terminated**Status Date:** 06/03/2003

## Defendant

**Name:** CONAGRA BRANDS, INC.**Correspondence:** PATRICK C. STEPHENSONMCGRATH, NORTH, MULLIN & KRATZ  
1601 Dodge St, Ste 3700, First Natl Twr  
Omaha, NE 68102**Serial #:** 76111750Application File**Application Status:** Abandoned - No Statement Of Use Filed**Mark:** SMART LUNCH

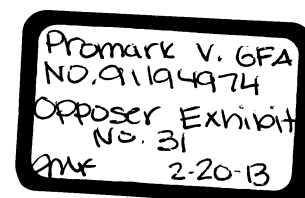
## Plaintiff

**Name:** FITNESS FOODS, INC., AND GFA BRANDS, INC**Correspondence:** JOHN L. AMBROGIWELSH & KATZ, LTD  
120 S RIVERSIDE PLZ, 22ND FL  
Chicago, IL 60606**Serial #:** 75127811Application File**Registration #:** 2276285**Application Status:** Renewed**Mark:** SMART BALANCE

## Prosecution History

#	Date	History Text	Due Date
9	06/03/2003	TERMINATED	
8	06/03/2003	<u>BD'S DECISION: DISMISSED W/ PREJUDICE</u>	
7	04/24/2003	<u>STIPULATION</u>	
6	03/20/2003	<u>STIPULATION NOTED AND APPROVED</u>	
5	02/27/2003	<u>P'S MOT FOR EXTEN. OF TIME W/ CONSENT</u>	
4	10/03/2002	<u>ANSWER</u>	
3	08/27/2002	PENDING, INSTITUTED	
2	08/27/2002	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	10/06/2002
1	08/06/2002	<u>FILED AND FEE</u>	

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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TRADEMARK TRIAL AND  
APPEAL BOARD

FITNESS FOODS, INC., and )  
GFA BRANDS, INC., )

Opposition No.

Opposers, )

Application Serial No.: 76/111,750

vs. )

Published: June 11, 2002

ConAgra Brands, Inc. )

Mark: SMART LUNCH

Applicant. )

U.S. Patent & TMO/TM Mail Rcpt. Dt. #57



08-06-2002

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on this date.

8-6-02 [Signature]  
Date

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NOTICE OF OPPOSITION

Opposers, Fitness Foods, Inc. ("Fitness"), a Delaware corporation having a business address at P.O. Box 397, 211 Knickerbocker Road, Cresskill, New Jersey 07626-0397, and GFA Brands, Inc. ("GFA"), an Ohio corporation, having business at P.O. Box 397, 211 Knickerbocker Road, Cresskill, New Jersey 07626-0397, believe that they will be damaged by Applicant's registration of the mark SMART LUNCH, United States Trademark Application Serial No.: 76/111750, on the following grounds:

1. Opposers have for many years been engaged in the business of, *inter alia*, the manufacture, sale, distribution and promotion of food products throughout the United States. Opposers' products have been advertised and promoted throughout the United States, and through such efforts, Opposers have built up substantial good will and consumer recognition of its products through its trademarks.

2. GFA is the owner of United States Trademark Registration Nos.: 2,276,285 and 2,200,663 for SMART BALANCE for certain food products.
3. GFA is the owner of United States Trademark Registration No. 2,182,820 for SMART OIL for certain food products.
4. GFA is the owner of United States Trademark Registration No. 2,302,961 for SMART COW for certain food products.
5. Fitness is the owner of United States Registration No. 1,836,307 for SMART SPREAD for certain food products.
6. Fitness is the owner of United States Trademark Registration No. 2,084,664 for SMART SQUEEZE for certain food products.
7. Fitness is the owner of United States Trademark Registration No. 1,754,419 for SMART BEAT for certain food products.
8. Fitness is the owner of the United States Trademark Registration Nos. 2,045,728 and 1,933,384 for SMART SLICES for certain food products.
9. Fitness is the owner of United States Trademark Registration No. 1,810,146 for SMART MAYO for certain food products.
10. Opposers have made use of the aforementioned SMART BALANCE, SMART OIL, SMART BEAT, SMART MAYO, SMART SPREAD, SMART SLICES, SMART COW and SMART SQUEEZE marks through their related companies.
11. Notwithstanding Opposers' prior rights in and to the above-identified trademark registrations, Applicant has filed an application, Serial No. 76/111750 for registration of SMART LUNCH for "lunch entrees consisting primarily of soy-based meat substitutes and soy-based cheese

substitutes” in International Class 29.

12. Opposer has written to Applicant’s listed attorney of record requesting that Applicant not adopt or use SMART LUNCH and to abandon its application for federal registration. Applicant has refused to agree to discontinue using the SMART LUNCH mark or to withdraw its application Serial No. 76/111750.

13. The Applicant’s SMART LUNCH mark is confusingly similar to the trademarks of Opposers and its use by Applicant on the goods stated in its application is likely to cause confusion, deception and mistake. Applicant’s registration or use of SMART LUNCH interferes with Opposers’ use of their marks and continued use or registration of SMART LUNCH by Applicant will seriously damage Opposers.

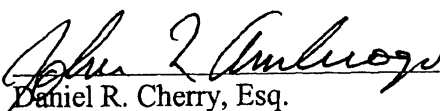
**WHEREFORE**, Opposers request that Application's Serial No. 76/111750 be refused registration; that no registration be issued to Applicant for the SMART LUNCH mark; and that this opposition be sustained in favor of Opposers.

Respectfully submitted,

FITNESS FOODS, INC. and  
GFA BRANDS, INC.

*August 6*, 2002

By:



Daniel R. Cherry, Esq.

John L. Ambrogi, Esq.

Daniel J. Gurfinkel, Esq.

WELSH & KATZ, LTD.

120 South Riverside Plaza,

22<sup>nd</sup> Floor

Chicago, Illinois 60606

(312) 655-1500

Attorneys for Opposers



# WELSH & KATZ, LTD.

*Attorneys at Law*

120 SOUTH RIVERSIDE PLAZA • 22ND FLOOR  
CHICAGO, ILLINOIS 60606-3912

TELEPHONE (312) 655-1500  
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August 6, 2002

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STEVEN E. FELDMAN  
JEFFREY W. SALMON

Box TTAB FEE

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202

Re: Fitness Foods, Inc. and GFA Brands, Inc. v. ConAgra Brands, Inc.  
Application No.: 76/111,750  
Published: June 11, 2002  
Our File No.: 1428/74696

Sir:

Enclosed is an original and two (2) copies of a Notice of Opposition with regard to the above-referenced application and Welsh & Katz, Ltd Check No. 076029 in the amount of \$600.00 to cover the filing fee for filing the Notice of Opposition in the name Fitness Foods, Inc. and GFA Brands, Inc.

The Commissioner is hereby authorized to charge any additional fees which may be required or credit any overpayment to Deposit Account No. 23-0920. Should no proper payment be enclosed, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to the above-mentioned Deposit Account. Two duplicate copies of this letter are enclosed.

Very truly yours,

WELSH & KATZ, LTD.

By:

*John L. Ambrogi*  
John L. Ambrogi, Esq.

JLA/skb  
Enclosures



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## Opposition

**Number:** 91152706**Filing Date:** 08/06/2002**Status:** Terminated**Status Date:** 05/29/2003**Interlocutory Attorney:** CINDY B GREENBAUM

## Defendant

**Name:** CONAGRA BRANDS, INC.**Correspondence:** PATRICK C. STEPHENSON

MCGRATH, NORTH, MULLIN &amp; KRATZ, P.C.

1400 ONE CENTRAL PARK PLAZA OMAHA, NE 68102

**Serial #:** 76111722[Application File](#)**Application Status:** Abandoned - After Inter-Partes Decision**Mark:** SMART PUDDING

## Plaintiff

**Name:** FITNESS FOODS, INC. AND GFA BRANDS, INC.**Correspondence:** JOHN L. AMBROGI

WELSH &amp; KATZ, LTD.

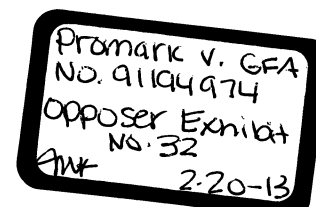
120 SOUTH RIVERSIDE PLAZA, 22ND FLOOR CHICAGO, IL 60606

**Serial #:** 75127811[Application File](#)**Registration #:** 2276285**Application Status:** Renewed**Mark:** SMART BALANCE

## Prosecution History

#	Date	History Text	Due Date
9	05/29/2003	TERMINATED	
8	05/29/2003	<u>BOARD'S DECISION: SUSTAINED</u>	
7	04/28/2003	<u>ABANDONMENT OF SN 76111722</u>	
6	04/04/2003	<u>GRANTED P'S #5</u>	
5	02/27/2003	<u>P'S REQ. TO RESET TRIAL DATES W/CON</u>	
4	10/03/2002	<u>ANSWER</u>	
3	08/31/2002	PENDING, INSTITUTED	
2	08/31/2002	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	10/10/2002
1	08/06/2002	<u>FILED AND FEE</u>	

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08-06-2002

THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

FITNESS FOODS, INC., and  
GFA BRANDS, INC.,

Opposers,

vs.

ConAgra Brands, Inc.

Applicant.

Opposition No.

Application Serial No.: 76/111,722

Published: June 11, 2002

Mark: SMART PUDDING

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NOTICE OF OPPOSITION

Opposers, Fitness Foods, Inc. ("Fitness"), a Delaware corporation having a business address at P.O. Box 397, 211 Knickerbocker Road, Cresskill, New Jersey 07626-0397, and GFA Brands, Inc. ("GFA"), an Ohio corporation, having business at P.O. Box 397, 211 Knickerbocker Road, Cresskill, New Jersey 07626-0397, believe that they will be damaged by Applicant's registration of the mark SMART PUDDING, United States Trademark Application Serial No.: 76/111722, on the following grounds:

1. Opposers have for many years been engaged in the business of, *inter alia*, the manufacture, sale, distribution and promotion of food products throughout the United States. Opposers' products have been advertised and promoted throughout the United States, and through such efforts, Opposers have built up substantial good will and consumer recognition of its products through its trademarks.

08/19/2002 SWILSON1 00000114 76111722

01 FC:377

600.00 OP

2. GFA is the owner of United States Trademark Registration Nos.: 2,276,285 and 2,200,663 for SMART BALANCE for certain food products.

3. GFA is the owner of United States Trademark Registration No. 2,182,820 for SMART OIL for certain food products.

4. GFA is the owner of United States Trademark Registration No. 2,302,961 for SMART COW for certain food products.

5. Fitness is the owner of United States Registration No. 1,836,307 for SMART SPREAD for certain food products.

6. Fitness is the owner of United States Trademark Registration No. 2,084,664 for SMART SQUEEZE for certain food products.

7. Fitness is the owner of United States Trademark Registration No. 1,754,419 for SMART BEAT for certain food products.

8. Fitness is the owner of the United States Trademark Registration Nos. 2,045,728 and 1,933,384 for SMART SLICES for certain food products.

9. Fitness is the owner of United States Trademark Registration No. 1,810,146 for SMART MAYO for certain food products.

10. Opposers have made use of the aforementioned SMART BALANCE, SMART OIL, SMART BEAT, SMART MAYO, SMART SPREAD, SMART SLICES, SMART COW and SMART SQUEEZE marks through their related companies.

11. Notwithstanding Opposers' prior rights in and to the above-identified trademark registrations, Applicant has filed an application, Serial No. 76/111722 for registration of SMART PUDDING for "soy based food products used as pudding substitutes" in International Class 30.

12. Opposer has written to Applicant's listed attorney of record requesting that Applicant not adopt or use SMART PUDDING and to abandon its application for federal registration. Applicant has refused to agree to discontinue using the SMART PUDDING mark or to withdraw its application Serial No. 76/111722.

13. The Applicant's SMART PUDDING mark is confusingly similar to the trademarks of Opposers and its use by Applicant on the goods stated in its application is likely to cause confusion, deception and mistake. Applicant's registration or use of SMART PUDDING interferes with Opposers' use of their marks and continued use or registration of SMART PUDDING by Applicant will seriously damage Opposers.

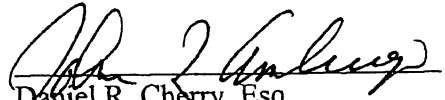
**WHEREFORE**, Opposers request that Application's Serial No. 76/111722 be refused registration; that no registration be issued to Applicant for the SMART PUDDING mark; and that this opposition be sustained in favor of Opposers.

Respectfully submitted,

FITNESS FOODS, INC. and  
GFA BRANDS, INC.

August 6, 2002

By:

  
Daniel R. Cherry, Esq.

John L. Ambrogi, Esq.

Daniel J. Gurfinkel, Esq.

WELSH & KATZ, LTD.

120 South Riverside Plaza,  
22<sup>nd</sup> Floor

Chicago, Illinois 60606

(312) 655-1500

Attorneys for Opposers



08-06-2002.

## WELSH & KATZ, LTD.

*Attorneys at Law*

120 SOUTH RIVERSIDE PLAZA • 22ND FLOOR  
CHICAGO, ILLINOIS 60606-3912

TELEPHONE (312) 655-1500  
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August 6, 2002

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OF COUNSEL  
LAURIE A. HAYNIE  
JAMES J. MYRICK  
THOMAS R. VIGIL

DONALD L. WELSH (1925-1998)

\* ALSO ADMITTED IN DISTRICT OF COLUMBIA

Re: Fitness Foods, Inc. and GFA Brands, Inc. v. ConAgra Brands, Inc.  
Application No.: 76/111,722  
Published: June 11, 2002  
Our File No.: 1428/74696

Sir:

Enclosed is an original and two (2) copies of a Notice of Opposition with regard to the above-referenced application and Welsh & Katz, Ltd Check No. 076047 in the amount of \$600.00 to cover the filing fee for filing the Notice of Opposition in the name Fitness Foods, Inc. and GFA Brands, Inc.

The Commissioner is hereby authorized to charge any additional fees which may be required or credit any overpayment to Deposit Account No. 23-0920. Should no proper payment be enclosed, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to the above-mentioned Deposit Account. Two duplicate copies of this letter are enclosed.

Very truly yours,

WELSH & KATZ, LTD.

By:

John L. Ambrogi, Esq.

JLA/skb  
Enclosures



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## Opposition

**Number:** 91123458**Filing Date:** 06/28/2001**Status:** Terminated**Status Date:** 10/20/2003**Interlocutory Attorney:** ALBERT J ZERVAS

## Defendant

**Name:** JOSEPH MICHAEL O'NEIL**Correspondence:** TIMOTHY A. LONG  
CHERNOFF VILHAUER MCCLUNG & STENZEL  
601 SW 2ND AVENUE SUITE 1600  
PORTLAND, OR 97204-3157**Serial #:** 75726461[Application File](#)**Application Status:** Abandoned - After Inter-Partes Decision**Mark:** SMART JUICE

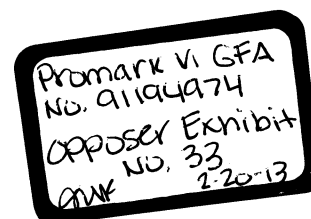
## Plaintiff

**Name:** FITNESS FOODS, INC. AND GFA BRANDS, INC.**Correspondence:** JOHN L. AMBROGI  
WELSH & KATZ, LTD.  
120 SOUTH RIVERSIDE PLAZA 22ND FLOOR  
CHICAGO, IL 60606**Serial #:** 75127811[Application File](#)**Registration #:** 2276285**Application Status:** Renewed**Mark:** SMART BALANCE

## Prosecution History

#	Date	History Text	Due Date
8	10/20/2003	TERMINATED	
7	10/20/2003	DELETE ENTRY	
6	07/26/2002	TERMINATED	
5	07/26/2002	BOARD'S DECISION: SUSTAINED	
4	04/04/2002	NOTICE OF DEFAULT	
3	07/13/2001	PENDING, INSTITUTED	
2	07/13/2001	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	08/22/2001
1	06/28/2001	FILED AND FEE	

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Mark: SMART JUICE

US Serial Number: 75726461

Application Filing Date: Jun. 10, 1999

Register: Principal

Mark Type: Trademark

Status: Abandoned after an inter partes decision by the Trademark Trial and Appeal Board. For further information, see TTABVue on the Trademark Trial and Appeal Board web page.

Status Date: Jul. 26, 2002

Publication Date: Jan. 30, 2001

Date Abandoned: Jul. 26, 2002

## Mark Information

Mark Literal Elements: SMART JUICE

Standard Character Claim: No

Mark Drawing Type: 1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)

Disclaimer: "JUICE"

## Goods and Services

### Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks \*...\* identify additional (new) wording in the goods/services.

For: Fruit juices

International Class: 032 - Primary Class

U.S. Class: 045, 046, 048

Class Status: ABANDONED

Basis: 1(b)

## Basis Information (Case Level)

Filed Use: No

Currently Use: No

Amended Use: No

Filed ITU: Yes

Currently ITU: Yes

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

## Current Owner(s) Information

Owner Name: O'Neil, Joseph Michael

Owner Address: 9 Buckingham Terrace  
Lake Oswego, OREGON 97034  
UNITED STATES

Legal Entity Type: INDIVIDUAL

Citizenship: UNITED STATES

**Attorney/Correspondence Information****Attorney of Record**

Attorney Name: Timothy A. Long

Docket Number: 7745.001

**Correspondent**

Correspondent TIMOTHY A LONG

Name/Address: CHERNOFF VILHAUER MCCLUNG & STENZEL  
601 SW 2ND AVE  
STE 1600  
PORTLAND, OREGON 97204-3157  
UNITED STATES

Domestic Representative - Not Found

**Prosecution History**

Date	Description	Proceeding Number
Oct. 20, 2003	OPPOSITION TERMINATED NO. 999999	123458
Oct. 20, 2003	OPPOSITION TERMINATED NO. 999999	123458
Jul. 26, 2002	ABANDONMENT - AFTER INTER PARTES DECISION	
Jul. 26, 2002	OPPOSITION TERMINATED NO. 999999	123458
Jul. 26, 2002	OPPOSITION SUSTAINED NO. 999999	123458
Jul. 13, 2001	OPPOSITION INSTITUTED NO. 999999	123458
Mar. 01, 2001	EXTENSION OF TIME TO OPPOSE RECEIVED	
Jan. 30, 2001	PUBLISHED FOR OPPOSITION	
Dec. 29, 2000	NOTICE OF PUBLICATION	
Sep. 30, 2000	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jun. 26, 2000	CORRESPONDENCE RECEIVED IN LAW OFFICE	
Jan. 04, 2000	NON-FINAL ACTION MAILED	
Oct. 08, 1999	ASSIGNED TO EXAMINER	69222
Sep. 22, 1999	ASSIGNED TO EXAMINER	76745
Sep. 21, 1999	ASSIGNED TO EXAMINER	76722

**TM Staff and Location Information****TM Staff Information**

TM Attorney: BUCHANAN WILL, NORA

Law Office Assigned: LAW OFFICE 101

**File Location**

Current Location: FILE REPOSITORY (FRANCONIA)

Date in Location: Jul. 30, 2002



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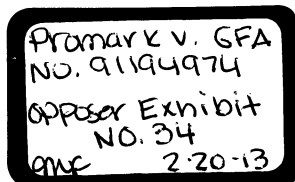
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**Opposition****Number:** 91118815**Filing Date:** 03/02/2000**Status:** Terminated**Status Date:** 05/02/2001**Interlocutory Attorney:** LINDA M. SKORO**Defendant****Name:** PROCTER & GAMBLE CORPORATION**Correspondence:** MARCOO KERSCHENTHE PROCTER & GAMBLE COMPANY  
ONE PROCTER & GAMBLE PLAZA  
CINCINNATI, OH 45202**Serial #:** 75745038Application File**Application Status:** Abandoned - After Inter-Partes Decision**Mark:** COOKSMART**Plaintiff****Name:** FITNESS FOODS, INC. AND GFA BRANDS, INC.**Correspondence:** JOHN L. AMBROGI, ESQ.WELSH & KATZ, LTD.  
120 SOUTH RIVERSIDE PLAZA 22ND FLOOR  
CHICAGO, IL 60606**Serial #:** 75127811Application File**Registration #:** 2276285**Application Status:** Renewed**Mark:** SMART BALANCE**Prosecution History**

#	Date	History Text	Due Date
6	05/02/2001	TERMINATED	
5	05/02/2001	BD'S DECISION: DISMISSED W/O PREJUDICE	
4	10/16/2000	WITHDRAWAL OF APPLICATION	
3	06/16/2000	PENDING, INSTITUTED	
2	06/16/2000	NOTICE SENT; TRIAL DATES RESET; ANSWER DUE	07/26/2000
1	03/02/2000	FILED AND FEE	

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Mark: COOKSMART

US Serial Number: 75745038

Application Filing Date: Jul. 29, 1999

Register: Principal

Mark Type: Trademark

Status: Abandoned after an inter partes decision by the Trademark Trial and Appeal Board. For further information, see TTABVue on the Trademark Trial and Appeal Board web page.

Status Date: May 02, 2001

Publication Date: Dec. 07, 1999

Date Abandoned: May 02, 2001

## Mark Information

Mark Literal Elements: COOKSMART

Standard Character Claim: No

Mark Drawing Type: 1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)

## Goods and Services

### Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks \*..\* identify additional (new) wording in the goods/services.

For: Edible oil in liquid form

International Class: 029 - Primary Class

U.S Class: 046

Class Status: ACTIVE

Basis: 1(b)

## Basis Information (Case Level)

Filed Use: No

Currently Use: No

Amended Use: No

Filed ITU: Yes

Currently ITU: Yes

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

## Current Owner(s) Information

Owner Name: Procter & Gamble Company, The

Owner Address: One Procter & Gamble Plaza  
Cincinnati, OHIO 45202  
UNITED STATES

Legal Entity Type: CORPORATION

State or Country Where: OHIO

Organized:

## Attorney/Correspondence Information

**Attorney of Record****Attorney Name:** Marco Kerschen**Correspondent****Correspondent** KRISTIN J FROST**Name/Address:** CALFEE, HALTER & GRISWOLD LLP  
800 SUPERIOR AVE STE 1400  
CLEVELAND, OHIO 44114  
UNITED STATES**Phone:** (216) 622-8895**Fax:** (216) 241-0816**Correspondent e-mail:** [IPDocket@calfee.com](mailto:IPDocket@calfee.com)**Correspondent e-mail** Yes**Authorized:****Domestic Representative - Not Found****Prosecution History**

Date	Description	Proceeding Number
Aug. 12, 2004	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
May 02, 2001	ABANDONMENT - AFTER INTER PARTES DECISION	
May 02, 2001	OPPOSITION TERMINATED NO. 999999	118815
May 02, 2001	OPPOSITION DISMISSED NO. 999999	118815
Jun. 16, 2000	OPPOSITION INSTITUTED NO. 999999	118815
Dec. 17, 1999	EXTENSION OF TIME TO OPPOSE RECEIVED	
Dec. 07, 1999	PUBLISHED FOR OPPOSITION	
Nov. 05, 1999	NOTICE OF PUBLICATION	
Sep. 13, 1999	APPROVED FOR PUB - PRINCIPAL REGISTER	
Sep. 07, 1999	ASSIGNED TO EXAMINER	76745

**TM Staff and Location Information****TM Staff Information****TM Attorney:** MAHONEY, PAULAM**Law Office Assigned:** LAW OFFICE 101**File Location****Current Location:** FILE REPOSITORY (FRANCONIA)**Date in Location:** Feb. 05, 2003

# Buffett part of group to buy Heinz in \$23 billion deal

By The Associated Press | FEBRUARY 14, 2013

Promark v. GFA  
NO. 91194974  
Opposer Exhibit  
NO. 35  
2-20-13



TOBY TALBOT/AP/FILE

**H.J. Heinz Co. says it agreed to be acquired by an investment group that includes billionaire investor Warren Buffett in a deal valued at \$28 billion.**

NEW YORK (AP) — H.J. Heinz Co. is being purchased by an investment group including billionaire investor Warren Buffett in a deal valued at \$23.3 billion.

The ketchup company says it's the largest deal ever in the food industry. Heinz, based in Pittsburgh, also makes Classico spaghetti sauces, Ore-Ida potatoes and Smart Ones frozen meals.

"It's our kind of company," Buffett said in an interview on CNBC, noting its signature

ketchup has been around for more than a century. “I’ve sampled it many times.”

CONTINUE READING BELOW ▼

The company was founded by Henry John Heinz and his neighbor L. Clarence Noble in 1869. The pair’s first product was grated horseradish, bottled in a clear glass to showcase its purity. The first ketchup was introduced in 1876; the company says it was the country’s first commercial grade ketchup.

## Related

- Deal could grow John Kerry’s portfolio
- 

Last year, Heinz says it had sales of \$11.6 billion, with ketchup and sauces accounting for just under half of that. Given the saturated North American market, the company has increasingly looked overseas for growth. In 2013, emerging markets are expected to account for a quarter of the company’s sales.

Berkshire Hathaway and 3G Capital, the investment firm which bought Burger King in 2010, say Heinz will remain headquartered in Pittsburgh. Heinz CEO William Johnson said in a statement that the company “will have an opportunity to drive further growth” as a private enterprise.

Representatives for Heinz and the investment group weren’t able to immediately provide any further details on the deal, including whether there would be any management changes or layoffs.

Heinz shareholders will receive \$72.50 in cash for each share of common stock they own. The transaction value includes the assumption of Heinz’s debt. Based on Heinz’s number of shares outstanding, the deal is worth \$23.3 billion excluding debt.

The per-share price for the deal represents a 20 percent premium to Heinz’s closing price of \$60.48 on Wednesday. Heinz said the deal was unanimously approved by its board. Buffett said on CNBC that Berkshire is putting \$12 billion to \$13 billion into the deal. But he noted that Berkshire will still have room to make more acquisitions because its businesses continually replenish its cash supply.

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The deal is expected to close in the third quarter.

Shares of Heinz were up nearly 20 percent at \$72.45.

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## Warren Buffett buying H.J. Heinz Co.

Associated Press

Updated 9:17 pm, Thursday, February 14, 2013

Billionaire Warren Buffett is dipping into the ketchup business as part of a \$23.3 billion deal to buy H.J. Heinz Co., uniting a legend of American investing with a mainstay of grocery store shelves.

It's the largest deal ever in the food industry and is intended to help Heinz accelerate its transformation into a global business. The company, based in Pittsburgh, also makes Classico pasta sauces, Ore-Ida potatoes and Smart Ones frozen meals.

Buffett's Berkshire Hathaway and its partner on the deal - 3G Capital, the investment firm that bought Burger King in 2010 - say Heinz would remain based in Pittsburgh.

Heinz CEO William Johnson said at a news conference that taking the company private would give Heinz the flexibility to make decisions more quickly, without the burden of having to report quarterly earnings.

Heinz was founded by Henry John Heinz and his neighbor L. Clarence Noble in 1869. Their first product was grated horseradish, bottled in a clear glass to showcase its purity. The first ketchup was introduced in 1876, and the company says it was the country's first commercial-grade ketchup.

### Heinz looks overseas

Last year, Heinz had sales of \$11.6 billion, with ketchup and sauces accounting for just under half of that. Given the saturated North American market, it has increasingly been looking overseas for growth. In 2010, for example, the company bought Foodstar, which makes Master brand soy sauce and fermented bean curd in China. Heinz expects emerging markets to account for a quarter of the company's sales this year.

Johnson stressed that Heinz would remain in Pittsburgh, noting that the condition was part of the deal. He said the only changes the city should see as a result would be that Heinz would no longer be listed in the stock pages of newspapers.

As for management changes, including his own tenure, Johnson said there hadn't yet been any discussions.

Although 3G Capital has a record of aggressively cutting costs at businesses it acquires, managing partner Alex Behring noted at the news conference that Heinz is different because the business is healthy and has been growing its core sales.

Heinz's brands have power with shoppers that takes years to create, and it has been able to raise prices even in the highly competitive grocery business, said Brian Sozzi, chief equities analyst for NBG Productions.

"There isn't going to be another Heinz brand," he said. "It has a durable competitive advantage."

The deal is a departure for Buffett's investment firm, Berkshire Hathaway. Generally, Buffett prefers to buy entire companies and then allow the businesses to continue operating much the way they were before. Berkshire has also helped finance deals before - most recently during the financial crisis of 2008, when he made lucrative deals for Berkshire when few other companies had cash.

### Unanimous approval

Heinz shareholders would receive \$72.50 in cash for each share of common stock they own. The transaction value includes the assumption of Heinz's debt. Based on Heinz's number of shares outstanding, the deal is worth \$23.3 billion excluding debt.

The per-share price for the deal represents a 20 percent premium to Heinz's closing price of \$60.48 Wednesday. Heinz said the deal was unanimously approved by its board. Buffett said on CNBC that Berkshire is putting \$12 billion to \$13 billion into the deal.

### The Death of the PC


The days of paying for costly software upgrades are numbered. The PC will soon be obsolete. And *BusinessWeek* reports 70% of Americans are already using the technology that will replace it. Merrill Lynch calls it "a \$160 billion tsunami." Computing giants including IBM, Yahoo!, and Amazon are racing to be the first to cash in on this PC-killing revolution. Yet, a small group of little-known companies have a huge head start. Get the full details on these companies, and the technology that is destroying the PC, in a free video from The Motley Fool. Enter your email address below to view this stunning video.

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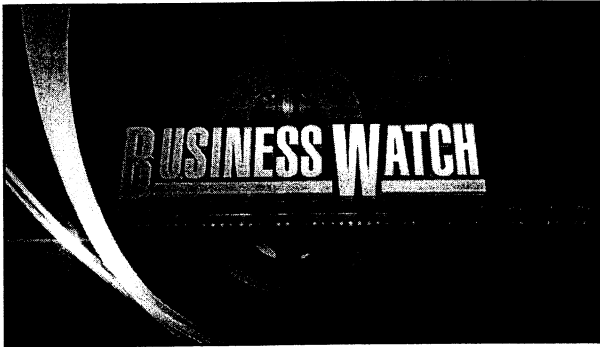
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Business 

## Heinz sold to Warren Buffett and others

Thursday, February 14, 2013

TAGS: [warren buffett](#), [heinz](#), [business](#)[Comment Now](#) [Email](#) [Print](#) [Report a typo](#)**AP** Associated Press Eyewitness News

NEW YORK -- Billionaire investor Warren Buffett is dipping into the ketchup business as part of \$23.3 billion deal to buy the Heinz ketchup company.

H.J. Heinz Co. says it's the largest deal ever in the food industry. The company, based in Pittsburgh, also makes Classico spaghetti sauces, Ore-Ida potatoes and Smart Ones frozen meals.

Buffett's Berkshire Hathaway and its partner on the deal - 3G Capital, the investment firm that bought Burger King in 2010 - say Heinz will remain headquartered in Pittsburgh. Heinz CEO William Johnson said in a statement that the company "will have an opportunity to drive further growth" as a private enterprise.

"It's our kind of company," Buffett said in an interview on CNBC, noting its signature ketchup has been around for more than a century. "I've sampled it many times."

The company was founded by Henry John Heinz and his neighbor L. Clarence Noble in 1869. Their first product was grated horseradish, bottled in a clear glass to showcase its purity. The first ketchup was introduced in 1876; the company says it was the country's first commercial grade ketchup.

Last year, Heinz says it had sales of \$11.6 billion, with ketchup and sauces accounting for just under half of that. Given the saturated North American market, the company has increasingly looked overseas for growth. In 2010, for example, the company bought Foodstar, which makes Master brand soy sauce and fermented bean curd in China. Heinz expects emerging markets to account for a quarter of the company's sales.

Representatives for Heinz and the investment group weren't able to immediately provide any further details on the deal, including whether there would be any management changes or layoffs.

Buffett did not immediately respond to a message from The Associated Press on Thursday. But he has recently said that he's been hunting for elephant-sized deals and at the end of September he had \$47.8 billion cash on hand to finance any investments.

Heinz has the type of brand equity that takes years to create and it has been able to raise prices even in the highly competitive grocery business, said Brian Sozzi, chief equities analyst for NBG Productions.

"There isn't going to be another Heinz brand," he said. "It has a durable competitive advantage."

Generally, Buffett prefers to buy entire companies for his Berkshire Hathaway conglomerate and then allow the businesses to continue operating much the way they were before. Berkshire has also helped finance deals before - most recently during the financial crisis of 2008, when he made lucrative deals for Berkshire when few other companies had cash.

Berkshire's biggest acquisition ever was its \$26.3 billion purchase of BNSF railroad in 2010. Before that, it was the \$16 billion stock purchase of reinsurance giant General Re in 1998.

Heinz shareholders will receive \$72.50 in cash for each share of common stock they own. The transaction value includes the assumption of Heinz's debt. Based on Heinz's number of shares outstanding, the deal is worth \$23.3 billion excluding debt.

The per-share price for the deal represents a 20 percent premium to Heinz's closing price of \$60.48 on Wednesday. Heinz said the deal was unanimously approved by its board. Buffett said on CNBC that Berkshire is putting \$12 billion to \$13 billion into the deal. But he noted that Berkshire will still have room to make more acquisitions because its businesses continually replenish its cash supply.

"Anytime we see a deal is attractive and it's our kind of business and we've got the money, I'm ready to go," Buffett said.

The deal is expected to close in the third quarter.

Shares of Heinz were up nearly 20 percent at \$72.45.

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## Warren Buffett investment group buys Heinz Company

**AP**— By The Associated Press

on February 14, 2013 at 7:27 AM, updated February 14, 2013 at 7:28 AM

NEW YORK (AP) — H.J. Heinz Co. has agreed to be acquired by an investment group including billionaire investor Warren Buffett in a deal valued at \$23.3 billion.

The ketchup company says it's the largest deal ever in the food industry. Heinz shareholders will receive \$72.50 in cash for each share of common stock they own. The transaction value includes the assumption of Heinz's debt. Based on Heinz's number of shares outstanding, the deal is worth \$23.3 billion excluding debt.

"It's our kind of company," Buffett said in an interview on CNBC, noting its signature ketchup has been around for more than a century. "I've sampled it many times."

In addition to its ketchup, Heinz makes Classico spaghetti sauces, Ore-Ida potatoes and Smart Ones frozen meals. The company was founded by Henry John Heinz and his neighbor L. Clarence Noble in 1869. The pair's first product was grated horseradish, bottled in a clear glass to showcase its purity. The first ketchup was introduced in 1876; the company says it was the country's first commercial grade ketchup.

Last year, Heinz says it had sales of \$11.6 billion, with ketchup and sauces accounting for just under half of that. Given the saturated North American market, the company has increasingly looked to emerging markets for growth. In 2013, emerging markets are expected to account for a quarter of the company's sales.

Berkshire Hathaway and 3G Capital, the investment firm which also bought Burger King in 2010, say Heinz will remain headquartered in Pittsburgh.

The per-share price for the deal represents a 20 percent premium to Heinz's closing price of \$60.48 on Wednesday. Heinz said the deal was unanimously approved by its board. Buffett said on CNBC that Berkshire is putting \$12 billion to \$13 billion into the deal. But he noted that Berkshire will still have room to make more acquisitions, noting that its businesses continually replenish its cash supply.

"Anytime we see a deal is attractive and it's our kind of business and we've got the money, I'm ready to go," Buffett said.

The deal is expected to close in the third quarter.

Shares of Heinz were up nearly 20 percent at \$72.45.

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## DAILY NEWS

U.S

## Warren Buffett investment consortium, Berkshire Hathaway and 3G Capital, to buy Heinz for \$28B

'It's our kind of company,' Buffett said, noting its signature ketchup has been around for more than a century. 'I've sampled it many times.'

THE ASSOCIATED PRESS

THURSDAY, FEBRUARY 14, 2013, 8:32 AM



CLIFF OWEN/ASSOCIATED PRESS

Warren Buffett speaks during the Economic Club of Washington's 25th anniversary celebration dinner in Washington in June.

H.J. Heinz Co. says it agreed to be acquired by an investment consortium including billionaire investor Warren Buffett in a deal valued at \$28 billion.

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"It's our kind of company," Buffett said in an interview on CNBC, noting its signature ketchup has been around for more than a century. "I've sampled it many times."



TOBY TALBOT/ASSOCIATED PRESS

Heinz ketchup bottles are displayed on the shelf of a market on in Barre, Vt.

In addition to its ketchup, Heinz makes Classico spaghetti sauces, Ore-Ida potatoes and Smart Ones frozen meals. Berkshire Hathaway and 3G Capital, the investment firm which also bought Burger King in 2010, say Heinz will remain headquartered in Pittsburgh.

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Given the saturated North American market, Heinz has increasingly looked to emerging markets for growth. In its last quarter, the company said emerging markets made up 23 percent of sales.

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## Group including Warren Buffett acquires H.J. Heinz for \$23 billion

### **The Associated Press**

Posted Feb 14, 2013 @ 08:43 AM

Last update Feb 14, 2013 @ 09:54 AM

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NetJets, a Berkshire Hathaway company and the worldwide leader in private aviation.

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Holland — H.J. Heinz Co. says it agreed to be acquired by an investment consortium including billionaire investor Warren Buffett in a deal valued at \$23.3 billion.

The ketchup company, which makes pickles, vinegar and a variety of sauces at its Holland plant on 16th Street, says shareholders will receive \$72.50 in cash for each share of common stock they own. The deal value includes the assumption of Heinz's debt. Based on Heinz's number of shares outstanding, the deal is worth \$23.3 billion excluding debt.

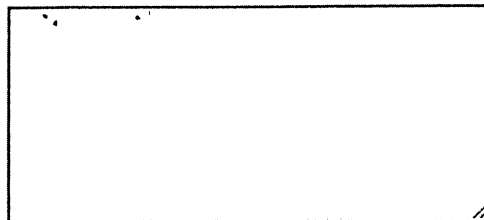
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"Anytime we see a deal is attractive and it's our kind of business and we've got the money, I'm ready to go," Buffet said.

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## Buffett and Brazilian investor to buy Heinz

February 14, 2013: 8:17 AM ET

**Berkshire Hathaway and 3G Capital plan to buy Heinz for \$28 billion.**

By Carol Loomis, senior editor-at-large

FORTUNE -- Two billionaires -- business and personal friends who live on separate continents -- announced today that their companies would jointly buy H.J. Heinz Co. for \$28 billion, including the assumption of \$4 billion in debt.

The two dealmakers are Warren Buffett and the Brazilian/Swiss businessman and philanthropist Jorge Paulo Lemann. Buffett's Berkshire Hathaway (BRKA) will own 50% of the venture, and 3G Capital, in which Lemann is a principal, will hold the remainder.

The Lemann group will also play a role in Heinz's management, working with the company's CEO, William R. Johnson.



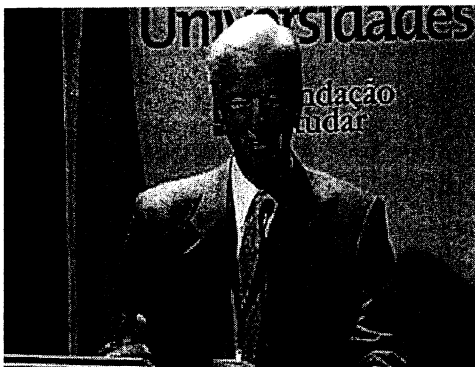
Warren Buffett

The all-cash deal will pay Heinz shareholders \$72.50 a share, which is just under a 20% premium to Heinz's closing price yesterday, \$60.48. Yesterday's price was near the all-time high for Heinz, which has roughly doubled since the stock market's bottom in March, 2009.

Heinz, a multinational with a growing presence in emerging markets, had revenues of \$11.6 billion and net income of nearly \$1.1 billion in its fiscal year ended last May. The company's biggest seller is its famous ketchup. Among other Heinz products are a variety of sauces, canned goods, and frozen foods including Ore-Ida potatoes and Smart Ones low-calorie entrees.

### MORE: Buffett pulls ahead in wager against hedge funds

With Heinz's brands in mind, Buffett said today he had reworked a famous line from the 1967 movie *The Graduate*, in which a businessman tells young jobseeker Benjamin Braddock (Dustin Hoffman): "I just want to say one word to you. Plastics." Buffett's version: "I just want to say one word to you. Ketchup."



Jorge Paulo Lemann

For Buffett and Lemann, the Heinz (HNZ) deal came out of a close friendship that formed between them when both were directors of Gillette Co. in the 1990s and early 2000s. Buffett was on the board because Berkshire then owned close to 10% of Gillette. Lemann's primary business affiliation at the time was with the Brazilian brewery AmBev.

In 2004, AmBev merged with Belgium's Interbrew to form InBev, and in 2008 InBev -- with Lemann leading the drive -- **took over Anheuser Busch**. The amalgamation of all of these companies formed Anheuser-Busch InBev (BUD), the world's largest brewer, and a company in which Lemann remains a powerful force.

### MORE: Can Procter & Gamble CEO Bob McDonald hang on?

On another key front for Lemann, **3G Capital bought control of Burger King** in 2010. The chain, fortunate to say, is a large user of Heinz ketchup.

Beyond that cameo example of good judgment, the Lemann troops are known for their tight control of costs and for their focus on creating long-term value. Buffett is in general a great admirer of how his friend -- "Georgie Paulo," as Buffett calls him -- manages his businesses.

The Lemann influence will no doubt be felt at Heinz in a major way, because that is the way Lemann works.

Before the Heinz deal came along, **Buffett had repeatedly said** that he was on the hunt for a large acquisition for Berkshire -- "an elephant," as he termed it. His \$14 billion investment in Heinz might not quite have the size to qualify. But at the least the deal could still leave him room to shop for an incontestable elephant.


*Fortune senior editor-at-large Carol Loomis, who wrote this article, is a longtime friend of Warren Buffett's, the pro bono editor of his annual letter to shareholders, and a shareholder in Berkshire Hathaway.*

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Angel Hair Marinara

★★★★★

Whole grain angel hair pasta in a zesty marinara sauce with spinach, sliced yellow and green zucchini.

230  
Calories

4g  
Fat

4g  
Fiber

9g  
Protein

6  
PointsPlus®  
value



Broccoli & Cheddar Roasted Potatoes

★★★★☆

Roasted russet potatoes topped with broccoli and cheddar cheese sauce.

240  
Calories

7g  
Fat

4g  
Fiber

10g  
Protein

7  
PointsPlus®  
value



Chicken Enchiladas Suiza

★★★★★

Chicken enchiladas topped with a zesty sour cream and green chile sauce with Spanish rice, zucchini, corn, and bell peppers.

290  
Calories

5g  
Fat

3g  
Fiber

11g  
Protein

6  
PointsPlus®  
value



Chicken Oriental

★★★★☆

Juicy white meat chicken in a savory soy sauce with vegetables & rice.

230  
Calories

1.5g  
Fat

2g  
Fiber

14g  
Protein

6  
PointsPlus®  
value



Creamy Pasta Romano

☆☆☆☆☆

Radiatore pasta in a creamy tomato parmesan cheese sauce with tomatoes and spinach.

230  
Calories

5g  
Fat

4g  
Fiber

9g  
Protein

7  
PointsPlus®  
value



Creamy Rigatoni with Broccoli & Chicken

★★★★☆

A medley of pasta, broccoli florets and white meat chicken in a creamy parmesan sauce.

280  
Calories

5g  
Fat

3g  
Fiber

19g  
Protein

6  
PointsPlus®  
value



Fettucini Alfredo

★★★★★

Whole grain fettucini noodles tossed with tender broccoli florets in a creamy alfredo sauce.

240  
Calories

3.5g  
Fat

4g  
Fiber

12g  
Protein

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### Lasagna Bake with Meat Sauce



Curly, bite-sized lasagna ribbons in a rich meat sauce with mozzarella.

**270**  
Calories

**4g**  
Fat

**4g**  
Fiber

**13g**  
Protein



### Lasagna Florentine



Rich, five layer lasagna with ricotta cheese, zucchini & spinach.

**310**  
Calories

**11g**  
Fat

**4g**  
Fiber

**14g**  
Protein



### Lemon Herb Chicken Piccata



Grilled white meat chicken in a tangy lemon sauce with rice & spring vegetables.

**230**  
Calories

**1.5g**  
Fat

**2g**  
Fiber

**12g**  
Protein

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**Nutrition Facts**  
 Amount/erving % DV  
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 Saturated Fat 0g 0%  
 Trans Fat 0g 0%  
 Cholesterol 0mg 0%  
 Sodium 15mg 1%  
 Total Carb. 1g 0%  
 Dietary Fiber 1g 4%  
 Sugars 0g 0%  
 Protein 0g 0%  
 Vitamin A 0% • Vitamin C 10% • Calcium 2% • Iron 0%

**Product Benefit Comparison**  
 Leading Brand SmartGels  
 Gelatin Snacks  
 No Animal By-Products  
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A great snack for at home or on the GO!

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